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No. .....

In The

Supreme Court of the United States

October Term, 1984

LOUIS LIPHETE, et. al.,

Petitioners,

vs.

MERRITT STIERHEIM, et. al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the decision below upholding the refusal to grant a homestead tax exemption to black, Haitian aliens, who have continuously and lawfully resided, for over four years, in the State of Florida, by virtue of a Presidential Order, on the grounds that they do not have permanent immigrant visas is in conflict with this Court's decisions in *Elkins v. Moreno,* 435 U.S. 647 (1978); *Toll v. Moreno,* 458 U.S. 1 (1982); *Vlandis v. Kline,* 412 U.S. 441 (1973)?

Whether the decision below upholding the denial of a Homestead Tax Exemption to Petitioners because they do not possess a permanent immigrant visa, despite lawfully residing in Florida, for over four years, by virtue of a Presidential Order, deprives Petitioners of equal protection and due process of law, as well as violates the Supremacy Clause of the Constitution of the United States?

PARTIES TO THE PROCEEDING

The Petitioners are: Louis Liphete and Diane Mitial.

The Respondents are: Merritt Stierheim, as County Manager for Dade County, Florida; Franklin B. Bystrom, as Property Appraiser for Dade County, Florida; and Randy Miller, as Director of the Department of Revenue.

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OPINIONS BELOW

On November 7, 1984, the Supreme Court of Florida dismissed Petitioners' request for certiorari review of a decision of Florida's Third District Court of Appeal. The Supreme Court refused to hear any Motions for Rehearing. Pursuant to Article V, Section (3)(b)(3), Fla. Const., and Fla. R. App. P. 9.030 (a) (2) (A) (iii), and a line of cases interpreting these provisions, the Supreme Court of Florida refused to hear the Petition because the Third District Court of Appeal did not issue a written opinion but only issued a *per curiam* affirmance of the trial court's order. This decision is not reported. (Petitioners' Appendix—hereinafter referred to as PA-A1).

On October 2, 1984, the Third District Court of Appeal of Florida issued a *per curiam* affirmance, without written opinion, of the trial court's order, citing *Alcime v. Bystrom,* 451 So. 2d 1037 (Fla. 3d DCA 1984. This decision is reported at 455 So. 2d 1348, (Fla. 3d DCA 1984) (PA-A4).

On February 8, 1984, the Circuit Court of the 11th Judicial Circuit, In and For Dade County, Florida, dismissed Petitioners' First Amended Complaint (PA-A5) citing *Juarrero v. McNayr,* 157 So. 79 (Fla. 1963), as controlling the issue *sub judice.* This decision is not reported.

JURISDICTIONAL STATEMENT

This Petition seeks review of the decision of the Third District Court of Appeal of Florida upholding the

denial of homestead tax exemption to Petitioners (PA-A4). The Petitioners sought injunctive and declaratory relief in the Eleventh Judicial Circuit of Florida challenging the denial of Petitioners' application for Florida's homestead tax exemption. Among the allegations set forth in the Complaint were violations of the due process and equal protection clauses of the 14th Amendment, the Supremacy Clause of the Constitution of the United States, and 42 U.S.C. Sections 1981, 1983. The Circuit Court dismissed the case stating that the issue *sub judice* was controlled by the Supreme Court of Florida's decision in *Juarrero v. McNayr,* 157 So. 2d 79 (Fla. 1963) (PA-A5). *Juarrero* was decided more than a decade prior to this court's decisions in *Vlandis v. Kline,* 412 U.S. 441 (1973); *Elkins v. Moreno,* 435 U.S. 647 (1978); *Toll v. Moreno,* 458 U.S. 1 (1982).

On October 4, 1984, Florida's Third District Court of Appeal affirmed *per curiam* the trial court's order of dismissal, without entering a written opinion (PA-A4). Petitioners were thereby precluded from their only grounds for review by the Supreme Court of Florida.

On November 8, 1984, the Supreme Court of Florida dismissed a Petition to Invoke Discretionary Review. The Court also noted its refusal to entertain any Motion for Rehearing (PA-A1). The Supreme Court's dismissal was based on a line of cases interpreting Article V Section (3) (b) (3), Fla. Const., and Fla. R. App. P. 9.030 (a)(2)(A)(iii). Those cases have held that the Supreme Court will not review cases in this area in which the District Court of Appeal enters a *per curiam* affirmance without a written opinion. Petitioners then filed this timely Petition for certiorari.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257 (3)(1982).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioners' claims are based on the equal protection and due process guarantees of the Fourteenth Amendment to the United States Constitution; the Supremacy Clause of the United States Constitution; Article VII, Section 6 of the Florida Constitution; and Sections 196.012, 196.015, 196.031, Florida Statutes. These provisions are set forth below:

CONSTITUTION OF THE UNITED STATES

ARTICLE VI.

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

CONSTITUTION OF THE UNITED STATES, AMENDMENTS

ARTICLE XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONSTITUTION OF THE STATE OF FLORIDA

ARTICLE VII

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

SECTION 196.012, FLORIDA STATUTES (1983)

196.012 Definitions.—For the purpose of this chapter, the following terms are defined as follows, except where the context clearly indicates otherwise:

(16) "Permanent resident" means a person who has established a permanent residence as defined in subsection (17).

(17) "Permanent residence" means that place where a person has his true, fixed, and permanent home and principal establishment to which, whenever absent, he has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

SECTION 196.015, FLORIDA STATUTES (1983)

196.015 Permanent residency; factual determination by property appraiser.—Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

(1) Formal declarations of the applicant.

(2) Informal statements of the applicant.

(3) The place of employment of the applicant.

(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.

(5) The place where the applicant is registered to vote.

(6) The place of issuance of a driver's license to the applicant.

(7) The place of issuance of a license tag on any motor vehicle owned by the applicant.

(8) The address as listed on federal income tax returns filed by the applicant.

(9) The previous filing of Florida intangible tax returns by the applicant.

SECTION 196.031, FLORIDA STATUTES (1983)

196.031 Exemption of homesteads.—

(1) Every person who has the legal title or beneficial title in equity to real property in this state and

who resides thereon and in good faith makes the same his permanent residence, or the permanent residence of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation.

STATEMENT OF THE CASE

This Petition challenges the State of Florida's blanket denial of homestead tax exemption to all aliens not in possession of a permanent resident card, the so-called "green card". The State's denial is based on the theory that an alien not in posession of the permanent residence visa cannot in good faith declare a permanent residence within the State.

The decision of Florida's Third District Court of Appeal (PA-A4) conflicts with the well-settled doctrine of this Court in *Vlandis v. Kline,* 412 U.S. 441 (1973); *Elkins v. Moreno,* 435 U.S. 647 (1978); *Toll v. Moreno,* 458 U.S. 1 (1982). The District Court of Appeal held that it was bound by a Florida Supreme Court decision, *Juarrero v. McNayr,* 157 So. 2d 79 (Fla. 1963). The Florida Supreme Court, the only state court with the power to re-examine *Juarrero* in the light of *Vlandis, Elkins,* and *Toll,* ruled that it was without jurisdiction to do so (PA-A1). The result is a violation of Petitioners' rights to equal protection and due process, and a violation of the Supremacy Clause of the United States Constitution.

This Petition recognizes the State's authority to create and enforce taxes and does not attempt to challenge the homestead tax exemption or the requirements enumerated within the Statute for an individual to obtain this

benefit. However, this Petition does challenge the State's authority to deny this benefit to aliens in a discrminatory fashion.

Petitioners are black immigrants from Haiti who arrived at Florida's shores more than six years ago (PA-A23, A25). Having fled the political oppression and exploitation of their native land they have struggled to build a new life in Florida. Working long hours, for low pay they have scrimped and saved to fulfill a dream: ownership of their own small home.

In 1980, along with thousands of others who had fled their homelands to seek their dreams in the United States, Petitioners were granted the unique status of Cuban/Haitian Entrants (PA-A31). This status authorized Petitioners and the other predominantly black immigrants from Cuba and Haiti who qualified, to remain in the United States indefinitely. Special provisions were made for federally reimbursing local agencies which were instructed to treat Cuban/Haitian Entrants as permanent residents under color of law and to open social services, schools, and job training programs to them. Employment authorization was extended to all Cuban/Haitian Entrants automatically and all deportation proceedings were halted against them. Until Congress would act to ratify the decision, by directive of then President Jimmy Carter, Petitioners were accepted as permanent residents of the United States.

Since 1978, when Petitioners unequivocally abandoned their previous residence in Haiti, they have made their home in Florida. Petitioners are presently employed, pay taxes to the State of Florida, possess a Florida's drivers license, and own a car registered in Florida. As the final

steps toward establishing their permanent residence, Petitioners were able to purchase a small house in Miami, Florida. Petitioners are not mere transients but have evidenced both a subjective and objective intent to remain permanent residents of the State of Florida (PA-A23, A25). Petitioners fulfill all the criteria for permanent residence as outlined in Section 196.015, Florida Statutes (1983). Their application for homestead tax exemption was denied solely on the basis of their not possessing a permanent resident visa.

In early 1983, Petitioners, along with all other permanent resident homeowners applied for Florida's homestead tax exemption. Petitioners thereby hoped to save what is a substantial sum to them of several hundred dollars in property taxes.

Petitioners' application was denied on the basis that they were not in possession of a lawful permanent resident card (PA-A27). Petitioner's administrative appeal to the Dade County Property Appraisal Adjustment Board was denied on the same grounds (PA-A18).

Subsequently, Petitioners filed suit in the Circuit Court for the Eleventh Judicial Circuit of Florida (PA-A8). Petitioners' suit was dismissed, the trial courts ordering that the issue *sub judice* was controlled by a Florida Supreme Court decision. *Juarrero, supra* (PA-A5).

Petitioners appeal to Florida's Third District Court of Appeal was also dealt with summarily, the court issuing a *per curiam* affirmance, without written opinion, citing *Alcime v. Bystrom,* 451 So. 2d 1037 (Fla. 3d DCA 1984) (PA-A4). *Alcime,* had been decided three months earlier, the court ruling the issue was controlled by *Juarrero, supra* (PA-A29).

Both the trial court and the Court of Appeal found that they were bound by a twenty year old Florida Supreme Court case. That decision, however, conflicts with the now settled doctrine of this Court as enunciated in *Vlandis, Elkins,* and *Toll, supra.* The State of Florida has, thereby, violated Petitioners' rights to due process and equal protection. In addition, the decision violates the Supremacy Clause of the United States Constitution by interfering with Presidential policy permitting Cuban/Haitian Entrants to remain indefinitely in the United States.

Petitioners' Notice to Invoke the Discretionary Review of the Florida Supreme Court was dismissed on November 7, 1984, the Court citing a lack of jurisdiction (PA-A1). The Supreme Court's dismissal was based on a line of Florida cases interpreting Art. V, Section (3) (b) (3), Fla. Const., and Fla. R. App. P. 9.030(a) (2) (A) (iii). Those cases have held that the Florida Supreme Court does not have jurisdiction to review District Court of Appeal orders which *per curiam* affirmed, without opinion, a trial court order. Petitioners were thereby precluded from obtaining a review of the issue by the only court with the capacity to rectify *Juarrero* in light of the more recent decisions of this Court.

The result of the State of Florida's denial of the homestead tax exemption to Petitioners is that a black, low-income family of immigrants must now face a burden of state taxes not imposed on all other permanent residents of the State. The State of Florida has added this stigma of unequal treatment to the already heavy burden which this immigrant family has shouldered.

REASONS FOR GRANTING THIS WRIT

This Court should grant this Petition for Certiorari for three reasons. First, this case is based upon a state court decision that creates a conflict with the well-settled principles of *Elkins v. Moreno,* 435 U.S. 647 (1978), *Vlandis v. Kline,* 412 U.S. 441 (1973) and *Toll v. Moreno,* 458 U.S. 1 (1982). The Third District Court of Appeal of Florida and the lower court, in reaching their decisions, found controlling *Juarrero v. McNayr,* 157 So. 2d 79 (Fla. 1963), which was decided prior to the pertinent federal law.

Second, the lower court, by failing to adhere to well established Constitutional doctrine and Federal law denied a discrete minority of black aliens equal protection and due process of the law and violated the Supremacy Clause of the United States Constitution.

Third, Florida's procedure for invoking the discretionary jurisdiction of the Florida Supreme Court is devoid of any method to correct this recurring and substantial error. In this case Florida's Third District Court of Appeal has held that the issue is controlled by a Florida Supreme Court case, but has issued an opinion which precludes review, thereby denying the Florida Supreme Court the opportunity to reconsider its own decision.

I. This Court Should Grant Certiorari Because The Decision Of Florida's Court Directly Conflicts With This Court's Decisions In Elkins v. Moreno, 435 U.S. 647 (1978), Vlandis v. Kline, 412 U.S. 441 (1973), Toll v. Moreno, 458 U.S. 1 (1982).

This Petition comes to this Court with a record of the State's decision that immigrants, with the status of

Cuban/Haitian Entrants, do not have the legal capacity to form a good faith intent to declare permanent residence in the State of Florida.[1] This determination was based solely on their lack of a permanent resident alien card more commonly called a "green card".

A. The Florida Decision Conflicts with Elkins v. Moreno, 435 U.S. 647 (1978), Because The Florida Rule Does Not Examine The Alien's Specific Status To Determine Whether The Federal Government Has Authorized The Alien To Remain In The United States Indefinitely.

In *Elkins v. Moreno*, 435 U.S. 647 (1978), this Court held that an alien has the legal capacity to establish permanent residence unless the conditions attached to that alien's entry into the country bar that capacity. The Court stated that it is necessary to look beyond the form of an alien's immigration status and examine the substance of a particular status to determine whether conditions placed on the entry bar a claim of permanent residence.

The Florida courts' decision to treat a permanent resident visa as a magic formula without which perma-

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[1] The requirements of the Florida Homestead Tax Exemption are pursuant to Article VII Section 6 of the Florida Constitution which provides that " . . . every person who has the legal or equitable title to real estate and maintains therein the permanent residence of the owner . . . shall be exempt from taxation therein." The exemption was enacted by the Florida legislature as Section 196.031, Florida Statutes (1983).

nent residence is impossible was the same argument, explicitly rejected by this Court, when advanced by the State of Maryland in *Elkins, supra.*

A careful reading of *Elkins* shows that the Moreno family had been unable to establish domicile in Maryland because they were found to be legally incapable of establishing permanent residence in that State.

The University of Maryland policy reviewed by this Court stated: "It is the policy of the University of Maryland to grant in state status for admission, tuition, and charge-differential purposes to United States citizens and to immigrant aliens lawfully admitted for permanent residence in accordance with the laws of the United States. . . . ." *Elkins v. Moreno,* 435 U.S. at 651 (1978).

The policy then provided for other residency requirements and matters to be considered in determining whether domicile was established. Because Maryland officials had considered legal capacity to establish permanent residency a prerequisite to domicile, they denied the Moreno application without considering the other issues. This Court explicitly rejected this interpretation of federal immigration law. The Court held that an alien has the legal capacity to establish permanent residence in the United States *unless* that capacity is barred to the alien by the specific conditions governing the alien's legal entry.

Had the Florida courts followed the rule of *Elkins v. Moreno, supra,* Petitioners and other Cuban/Haitian Entrants would have been granted the homestead tax

exemption. The Petitioner in *Elkins* held a non-immigrant "G" visa, issued under the authority of 8 U.S.C. 1101 (a)(15)(G). Such visas are issued to employees of international organizations recognized by the Secretary of State.

The Supreme Court found that no conditions attached to the entry of the Moreno family with their "G" visa which would bar them from declaring, in good faith, the State of Maryland to be their permanent residence. Following the *Elkins* ruling at least four other categories of non-immigrant visa holders might in good faith have the capacity to declare permanent residence in the United States. *See,* 8 U.S.C. 1101(a)(15)(A), (E), (I), (K).[2]

On June 20, 1980, the Executive Branch of the United States government created an entirely new alien status granting Cubans who entered the country during the per-

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[2] The Immigration and Naturalization Act as amended recognizes thirteen "non-immigrant" categories. 8 U.S.C. 1101(a) (15) (A)-(M). Five of these statuses explicitly condition admittance to the United States with the language " . . . having a residence in foreign country which he has no intention of abandoning. . . ." 8 U.S.C. 1101(a) (15) (B), (F), (H), (J), (M). Under the ruling in *Elkins* holders of these visas do not have the legal capacity to declare in good faith the United States to be their permanent residence.

The conditions attached to the entry of several other categories of non-immigrant aliens, perhaps by implication, deny them the capacity to declare permanent residence in that it is required that they " . . . intend to depart from the United States . . ." at a certain time. The Florida Supreme Court in *Juarrero* decided that the very conditions attached to the entry of a political refugee barred their capacity to declare permanent residence by restricting their right to remain in the United States only to the duration of their need for asylum.

iod April 21 to June 19, 1980, and all Haitians, including Petitioners, who were formally known to the Immigration and Naturalization Service to be in this country on or before June 19, 1980, permission to remain in the United States indefinitely. This date was later extended to October 10, 1980.

An in-house memorandum sent out from the Central Office of INS dated November 10, 1980, mandated the procedure to be followed by INS District Offices. ". . . . All Haitians who were in INS proceedings as of midnight October 10, 1980, will be paroled or granted extended voluntary departure or stay of deportation as appropriate . . . Any O.S.C. (Order to Show Cause) that may have been issued will be cancelled. . ." No exercise of discretion is warranted or allowed in these procedures. The instructions further require the prior appoval of the Regional Commissioner of INS where an O.S.C. is issued to a Cuban or Haitian who is in "proceedings" but "excludable or deportable for other than documentary reasons" (PA-A32).

Thus, other than for those Cubans and Haitians who are found deportable or excludable for "other than documentary reasons", such as the conviction of a crime, the Executive Order has conferred a status which permits Petitioners to remain in the United States indefinitely. The Presidential Directive is similar to a statute designating a non-deportable class.

Indeed, far from excluding the abandonment of foreign residence, the Cuban/Haitian Entrant status presumed such abandonment. In an implementing directive dated June 27, 1980, addressed to "State administrative

and other Interested Agencies and Organizations" the Social Security Administration said of the Cuban/Haitian Entrants: ". . . They are to be considered to be permanently residing in the United States under the color of law and meet the requirements of 45 CFR 233.50" (Directive of June 27, 1980, p. 3) (PA-A35). This same message was reiterated at page 2 of a telegraphic message of the same date (PA-A38).

The Cuban/Haitian Entrant program has a unique and special character in the context of our immigration laws. It is not defined in any Act of Congress or regulation. It was created by Presidential directive in response to a critical political situation. While no Act or regulation defines it, the Executive policies expressed and the status created have the full force and effect of law. *U.S. v. New Orleans Public Service, Inc.*, 553 F. 2d 459 (5th Cir., 1977). The purpose of the program, as announced and conceived by the Executive branch, was to provide a specified class of aliens with the right to remain in the United States. From the inception of the program, the Executive branch expressed significant foreign policy and other interests in keeping this large group of people in the country on a permanent basis. *See,* Victor Palmieri, U.S. Coordinator for Refugee Affairs, *Cuban/Haitian Arrivals in U.S.,* Current Policy No. 193, June 20, 1980 (PA-A40); *Interpreter Releases Bulletin,* Vol. 57, No. 25, June 30, 1980 (PA-A48).

The plan from the beginning was to seek legislation to regularize the status of the Cuban/Haitian Entrants to that of lawful permanent residents. Thus, Victor Palmieri, in his June 20, 1980, press release spoke of the in-

tent to "provide for conversion to permanent resident alien status after two years" and to "resettle those whom common decency compels us to receive" (PA-A40). It was left to Congress to ultimately determine the exact parameters of the Cuban/Haitian Entrant status and the final eligibility requirements.

Even ignoring the explicitly expressed intent to grant these aliens the right to establish permanent residence, Cuban/Haitian Entrants have such a capacity. This Court in *Elkins v. Moreno,* 435 U.S. 647 (1978) ruled that any alien, absent conditions attached to their entry barring the capacity to declare permanent residence, has the legal capacity to declare in good faith that he intends to make the United States his permanent residence. No conditions are attached to the Cuban/Haitian Entrant status which would bar Petitioners' capacity to declare permanent residence in Florida under the *Elkins* ruling.

Florida's efforts to divide the world into those who can in good faith declare permanent residence and those who cannot, based solely on the criteria of possession of a permanent residence visa or "green card" is invalid and runs contrary to the holding of *Elkins, supra.* As indicated by this Court in *Elkins,* Florida's "green card" rule also violates the clear holding of this Court in *Vlandis v. Kline,* 412 U.S. 441 (1973).

B. The Florida Decision Conflicts With Vlandis v. Kline, 412 U.S. 441 (1973), Because Florida Has Established An Irrebutable Presumption That Only Aliens With "Green Cards" Can Permanently Reside In The State.

In *Vlandis v. Kline,* 412 U.S. 441 (1973), this Court held that a Connecticut statute was unconditional as vio-

lative of due process, which provided that in determining residency for tuition purposes, an unmarried student was a non-resident if his legal address was outside of Connecticut for any part of the one-year period immediately preceding his application for admission, and that a married student was a non-resident if his legal address was outside of Connecticut at the time of his application for admission.

In holding the Connecticut statute to be unconstitutional the Court stated:

> . . . the appellees attack Connecticut's irreversible and irrebuttable statutory presumption that because a student's legal address was outside the State at the time of his application for admission or at some point during the preceding year, he remains a nonresident for as long as he is a student there. This conclusive presumption, they say, is invalid in that it allows the State to classify as "out-of-state students" those who are, in fact, bona fide residents of the State. The appellees claim that they have a constitutional right to controvert that presumption of nonresidence by presenting evidence that they are bona fide residents of Connecticut. The District Court agreed: "Assuming that it is permissible for the state to impose a heavier burden of tuition and fees on non-resident than on resident students, the state may not classify as 'out of state students' those who do not belong in that class." 346 F. Supp. at 528. We affirm the judgment of the District Court.
>
> Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments. In *Heiner v. Donnan*, 285 U.S. 312, the Court was faced with a constitutional challenge to a federal

statute that created a conclusive presumption that gifts made within two years prior to the donor's death were made in contemplation of death, thus requiring payment by his estate of higher tax. In holding that this irrefutable assumption was so arbitrary and unreasonable as to deprive the tax-payer of his property without due process of law, the Court stated that it had "held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." *Id.*, at 329. (Citations omitted). *Vlandis, supra* at 455, 456.

After this Court's decision in *Elkins v. Moreno,* 435 U.S. 647 (1978), the presumption that only aliens in possession of a permanent resident status or "green card" have the legal capacity to form a good faith intent to permanently reside in Florida is just as unreasonable and arbitrary as were the presumptions in *Vlandis* and *Heiner.* Florida's courts in Petitioners' case have decided this presumption is absolutely irrebuttable. Petitioners were offered no opportunity to rebut the presumption. They tendered extensive evidence that Florida was their permanent residence (PA-A23, A25). All of this evidence was ignored.

C. The Decisions Of The Courts Of Florida Directly Conflict With The Decision Of Toll v. Moreno, 458 U.S. 1 (1982), Because It Imposes On Petitioners An Ancillary Burden Not Contemplated By The Presidential Order Creating The Cuban/Haitian Entrant Status, And Frustrates The Executive Policy Implicit In That Order.

In light of the Presidential Order granting Cuban/Haitian Entrants the right to remain permanently in the

United States, the decision of the courts of Florida to deny Petitioners the opportunity to declare a permanent residence in the State, and thereby to deny their application for homestead tax exemption, solely on the basis of their not being in possession of a permanent resident visa, amounts to an ancillary burden not contemplated by the Executive Order, and frustrates executive policy.

In *Toll, supra,* this Court held the University of Maryland's policy of denying domiciled, non-immigrant aliens holding G-4 visas in-state status, and thereby denying them preferential treatment for tuition fees, to be invalid under the Supremacy Clause.

As Congress had allowed G-4 aliens to enter the country on terms permitting the establishment of domicile in the United States, this Court held it an impermissible burden for a state to deny that alien certain rights attendant to a state domicilliary. *Toll, supra,* at 14.

Petitioners, Cuban/Haitian Entrants have by Presidential Order been granted the right to remain indefinitely in the United States. The State of Florida's blanket determination that only those aliens in possession of a permanent resident visa can make a good faith declaration of permanent residence in the State, thereby qualifying for the homestead tax exemption is an unconstitutional violation of the Supremacy Clause. This Court should grant certiorari to resolve this conflict.

II. Florida's Failure To Adhere To Well Established Doctrines Of This Court Denied Petitioners Equal Protection Of The Laws And Due Process Of Law And Violated The Supremacy Clause Of The United States Constitution.

Petitioners, black immigrants of Haitian national origin, have been subjected to invidious discrimination by

Florida's decision. Petitioners, as Cuban/Haitian Entrants, belong to a large class of predominantly black aliens, against whom the Florida decision impacts directly and totally.

A. The Florida Decision Deprives Petitioners of Equal Protection Of The Laws By Treating Them Differently From Other Permanent Homeowners Solely Because Of Their Alien Status.

When aliens are singled out and subjected to special treatment with regard to their status, a suspect class is created. The homestead tax exemption was designed to encourage new residents to the State. Article VII, Section 6 of the Florida Constitution provides that ". . . every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner . . . shall be exempt from taxation thereon. . . ."

The foregoing homestead tax exemption has been enacted by the legislature as Section 196.031, Florida Statutes (1983), and is effective as enacted.

Section 196.012, Florida Statutes defines permanent resident and permanent residence as follows:

> (16) Permanet resident means a person who has established a permanent residence as defined in subsection (17).
>
> (17) Permanent residence means that place where a person has his true, fixed and permanent home and principal establishment to which, whenever absent, he has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state

or country, it is presumed to continue until the person shows that a change has occurred.

At no point does the Florida Constitution or the statute require that an alien "permanent resident" of Florida for homestead tax exemption purpose be in possession of a U.S. immigration permanent residence visa, Form I-151, or the so-called "green card".

Florida's court-created presumption that only those aliens with the "green card" can be permanent residents, denied Petitioners equal protection. The State's initial decision did not include an evaluation of the factors enumerated in Section 196.015, Fla. Stat.[3] (1983) which aid the Property Appraiser in making the determination of an individual's capacity of declaring a permanent residence in the State of Florida. The Petitioner's submitted affidavits which clearly demonstrated their good faith intent to declare a permanent residence in the State

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[3] The factors enumerated are:

(1) Formal declarations of the applicant.
(2) Informal statements of the applicant.
(3) The place of employment of the applicant.
(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.
(5) The place where the applicant is registered to vote.
(6) The place of issuance of a driver's license to the applicant.
(7) The place of issuance of a license tag on any motor vehicle.
(8) The address as listed on federal income tax returns filed by the applicant.
(9) The previous filing of Florida intangible tax returns by the applicant. Laws 1981, c. 81-219, Section 2, eff. Jan. 1, 1982.

of Florida and undisputably met the requirements of Section 196.015, Florida Statutes (1983) (PA-A23, A25). The refusal to consider the very factors other applicants, including "green card" holders, can use to prove their "good faith intent" discriminates against these aliens and denies them equal protection. This attempt to treat Cuban/Haitian Entrants differently denied them equal protection of the law. No legitimate public purpose or compelling government interest exists to allow for this unequal treatment.

The result is that Petitioners have been and will be forced to pay property taxes at a higher rate than American citizens and resident aliens with "green cards", who may have resided in Florida for a shorter period of time and have less real claim to permanent residency. There can be no legitimate state purpose served, nor compelling state interest satisfied, by denying a homestead tax exemption, to state "residents" who have been living here for many years, intend to remain for the foreseeable future, pay taxes in every form, solely because of their Cuban/Haitian Entrant status.

Absent such legitimate state purpose and compelling interest, discrimination against aliens such as Petitioners falls far short of the standards this Court has set. *Graham v. Richardson,* 403 U.S. 365 (1971), *Sugarman v. Dougall,* 413 U.S. 634, 642 (1973). *In re Griffiths,* 413 U.S. 717, 721(1973); *Examining Board v. Flores De Otero,* 426 U.S. 572, 601-02 (1976); *Nyquist v. Mauclet,* 432 U.S. 1 (1977).

B. The Florida Decision Deprives Petitioners Of Due Process Of The Law By Creating An Arbitrary And Irrebuttable Presumption To Their Detriment.

As this Court noted in a different context, constitutionally protected interests in property are "normally

' . . . created and their dimensions are defined' by an independent source such as state statutes or rules entitling the citizen to certain benefits", *Goss v. Lopez,* 419 U.S. 565 (1975). The Florida homestead tax exemption is created by Article VII Section 6 of the Florida Constitution, and its parameters are further defined by Section 196.031, Florida Statutes (1983), and the various regulations promulgated thereunder. The Florida homestead tax exemption represents a significant property interest to Florida homeowners, including Petitioners.

Petitioners cannot be deprived of their property interest without being afforded due process of law, including an opportunity to be heard, *Goldberg v. Kelly,* 397 U.S. 254 (1970).

Florida has explicitly recognized this and has provided a framework of administrative hearings and court review before the homestead tax exemption can be finally denied. As mentioned above, Florida has enumerated various methods of establishing permanent residency.

At the same time, however, the Florida courts through their decisions have elevated the possession of a "green card" to a *sine qua non* for the legal capacity to become a resident of the state. An absolute and irrebuttable presumption has been established that only "green card" holders are capable of becoming permanent residents. This arbitrary and absolute presumption effectively deprives Petitioners of due process.

Since this Court's decision in *Elkins,* it has been clear that the permanent residence visa or "green card" is but

one factor to be taken into consideration in determining whether an alien is permitted to reside in the United States permanently. An alien possessing such a visa would clearly be authorized to establish permanent residence. It is also true that numerically the majority of aliens who are authorized to remain permanently in the country are "green card" holders. There are, nonetheless, many aliens who have been authorized to reside permanently in the United States, but given statuses other than that of a "green card" holder. Petitioners, as Cuban/Haitian Entrants, are in exactly such a category of aliens.

Although Petitioners were allowed hearings and court reviews, these were mere formal exercises, so far as they were concerned, once they failed to produce a "green card". Since other classes of aliens than those who have been granted "green cards" have been authorized to reside in the U.S. permanently, aliens must be afforded an opportunity to prove that they have been so authorized in order to be afforded minimal due process.

There is no provision in Florida which allows Petitioners or other aliens without permanent resident visas to offer evidence of their capacity to become permanent residents. This Court examined similar presumptions in *Vlandis v. Kline,* 412 U.S. 441 (1973). The irrebuttable nature of this presumption renders the opportunity to be heard a mere form, devoid of substance. By applying the presumption to Petitioners, Florida deprived them of a valuable property interest without affording them due process of law.

C. The Florida Courts' Failure To Adhere To Well-Established Doctrine Of This Court Vio-

lates The Supremacy Clause Of The United States Constitution.

In *Toll v. Moreno,* 458 U.S. 1 (1982), the United States Supreme Court held violative of the Supremacy Clause a state university's denial of "in-state" status to domiciled, non-immigrant aliens.

The Court noted the Federal government's preeminent role with respect to the regulation of aliens within our borders, and the substantial limitations which have been imposed upon the states in making classifications based upon alienage. *Toll, supra,* at 10.

Moreno was a G-4 alien, whom Congress had allowed to enter the country on terms permitting the establishment of domicile within the United States. Moreover, the Federal government had taken various affirmative steps to encourage organizations employing G-4 visa holders to locate within the United States.

The Supreme Court held that the state of Maryland's decision to bar G-4 aliens from acquiring "in-state" status, despite Congress' explicit decision not to bar them from acquiring domicile, solely on account of their federal immigration status, was an ancillary burden not contemplated by Congress, frustrated Federal policy, and was therefore in violation of the Supremacy Clause to the United States Constitution.

Petitioners, Liphete and Mitial, are Cuban/Haitian Entrants, beneficiaries of a Presidential order granting them the right to remain permanently in the United States. By failing to allow any aliens who do not possess "green cards" the possibility of establishing permanent residence in the state, Florida has violated the Supremacy Clause

of the United States Constitution. The Federal government has clearly preempted the field of deciding which classes of aliens may enter the country and establish permanent residency in the United States.[4]

No individual state has the power to deny any class of aliens, permitted by the Federal government to take up permanent residency in the United States, the capacity to reside permanently in that state. *Toll v. Moreno*, 458 U.S. 1 (1982).

III. Because Of Florida's Procedure For Invoking The Discretionary Jurisdiction Of The Supreme Court There Exists No Method For Correcting A Recurring Unconstitutional Error.

In 1963, the Florida Supreme Court decided *Juarrero v. McNayr*, 157 So.2d 79 (1963).

In 1984, The Third District Court of Appeal, basing its decision on *Juarrero*, held that a Haitian immigrant to the United States who did not possess a permanent resident visa could not qualify for Florida's homestead tax ex-

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[4] This Court's cases have long recognized the pre-eminent role of the Federal government with respect to regulation of aliens within the borders of the United States. *Toll v. Moreno*, 458 U.S. 1 (1982) at 20 citing to *Mathews v. Diaz*, 426 U.S. 67 (1976); *Graham v. Richardson*, 403 U.S. 365. 377-380 (1971); *Takahashi v. Fish & Game Commn*, 334 U.S. 410, 418-420 (1948); *Hines v. Davidowitz*, 312 U.S. 52, 62-68 (1941); *Truax v. Raich*, 239 U.S. 33, 42 (1915). The power derives from various sources including Article 1 Section 8 Clause 4, and Clause 3 citing *U.S. v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936), *Mathews v. Diaz*, at 81 n. 17, *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-589 (1952). "Not surprisingly therefore, new cases have also been at pain to note the substantial limitations upon the authority of the States in making classification based upon alienage."

emption. *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984) (PA -A29). *Alcime* was not appealed to the Florida Supreme Court. *Alcime* thereby became binding precedent in the Third District of Florida.

The Third District Court of Appeal affirmed *per curiam,* without written opinion, the trial court's denial of Petitioners' application for homestead tax exemption, citing *Alcime* (PA-A4). Petitioners were thereby precluded from obtaining review by the Supreme Court of Florida. Petitioners' attempt to invoke the discretionary jurisdiction of the Florida Supreme Court was dismissed because of lack of jurisdiction[5] (PA-A1).

Most Haitian immigrants, and more specifically most Cuban/Haitian Entrants, reside in Florida's Third District. Any future attempts by members of this class to apply for homestead tax exemption would be summarily dismissed by the trial courts on the basis of *Alcime.* Appeals to the Third District would receive *per curiam* affirmances without written opinion, again on the basis of *Alcime.* No further appeal would lie to Florida's Supreme Court.

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[5] The Florida Supreme Court's dismissal of Liphete et al.'s Petition to invoke the Court's discretionary review was based on a line of Florida cases which have held that the Supreme Court does not have jurisdiction to hear cases pursuant to Fla. R. App. P. 9.030(a) (2) (A), and Art. V, (3) (b) (3), Fla. Const., in which the District Court of Appeal issued a *per curiam* affirmance without a written opinion. *Jenkins v. State,* 385 So. 2d 1356 (Fla. 1980); *Dodi Publishing Co. v. Editorial America, S.A.,* 385 So. 2d 1369 (Fla. 1980); *Robles Del Mar Inc. v. Town of Indian River Shores,* 385 So. 2d 1371 (Fla. 1980).

Petitioners, as all future like-situated aliens, are effectively caught in a trap. The Florida Supreme Court, the only court with the power to rectify *Juarrero* and *Alcime*, in the light of *Elkins*, *Toll*, and *Vlandis*, is precluded from reviewing those decisions by the 1980 Amendments to Florida's State Constitution.

The question of whether the decision below is in conflict with this Court's well-settled doctrine, as represented by *Elkins*, *Toll*, and *Vlandis*, and if so whether such violates Petitioners' equal protection and due process rights, and violates the Supremacy Clause, can therefore, only be answered by this Court.

CONCLUSION

The issues presented are important ones. They impact on the lives of thousands of immigrants who have sought a new life in the United States. Should the decision, of which review is sought, be allowed to stand, the State of Florida, and by implication all other states, will be free to invidiously discriminate by denying lawful alien residents state benefits available to all other state residents. Settled doctrine of this Court holds that such discrimination cannot be allowed.

For these reasons, this Court should grant certiorari.

Respectfully submitted,

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*Counsel of Record

APPENDIX

SUPREME COURT OF FLORIDA

Wednesday, November 7, 1984
Case No. 66,121
District Court of Appeal, 3d District—No. 84-590

LOUIS LIPHETE, et al.,

Petitioners,

v.

MERRITT STIERHEIM, et al.,

Respondents.

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. *Dodi Publishing Co. v. Editorial America, S.A.*, 385 So.2d 1369 (Fla. 1980).

No Motion for Rehearing will be entertained by the Court.

A True Copy
TEST:

TC
cc: Hon. Louis J. Spallone, Clerk
Hon. David L. Levy, Judge
Hon. Richard P. Brinker, Clerk

John R. Greenwood, Esquire
Daniel A. Weiss, Esquire
Barbara Staros Harmon, Esquire

(SEAL)

Sid J. White
Clerk, Supreme Court
by: Debbie Causseaux
Deputy Clerk

IN THE DISTRICT COURT OF APPEAL
OF THE THIRD DISTRICT COURT OF FLORIDA

CASE NO. 84-590

LOUIS LIPHETE, and
DIANE MITIAL,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

NOTICE TO INVOKE DISCRETIONARY JURISDICTION

Florida Bar No. 317446

Notice is given that Louis Liphete and Diane Mitial, Petitioners, invoke the discretionary jurisdiction of the Supreme Court to review the decision of this Court rendered October 2, 1984. The decision expressly affects a class of constitutional or state officers.

Respectfully submitted,

Haitian American Community Association
of Dade (HACAD) Inc. Service Center

By /s/ JOHN R. GREENWOOD, ESQ.
Attorney for Petitioners
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Miami, Florida 33127
(305) 751-3429

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 31st day of October, 1984, to Daniel A. Weiss, Assistant County Attorney, 1626 Dade County Courthouse, 73 West Flagler Street, Miami, Florida 33130; and to Barbara Staros Harmon, Assistant Attorney General, Dept. of Legal Affairs, The Capitol,

Room LL04, Tallahassee, Florida, 32301, Attorneys for Respondents.

By /s/ JOHN R. GREENWOOD, ESQ.
Attorney for Petitioners

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 1984
CASE NO. 84-590

LOUIS LIPHETE and DIANE MITIAL,

Appellants,

vs.

MERRITT STIERHEIM, as County Manager for Dade County, Florida; FRANKLIN BYSTROM, as Property Appraiser for Dade County, Florida; and P. RANDY MILLER, as Director of the Department of Revenue for the State of Florida,

Appellees.

Opinion filed October 2, 1984.

An Appeal from the Circuit Court for Dade County, David L. Levy, Judge.

John R. Greenwood and Jonathan Thiele and Ira Kurzban, for appellants.

Jim Smith, Attorney General and Barbara Staros Harmon, Assistant Attorney General; Robert A. Ginsburg, County Attorney and Daniel A. Weiss, Assistant County Attorney, for appellees.

Before BARKDULL and PEARSON, DANIEL and FERGUSON, JJ.

PER CURIAM.

Affirmed. *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984).

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 83-38353 (09)

LOUIS LIPHETE and DIANE MITIAL,

Plaintiffs,

vs.

MERRITT STIERHEIM, as County Manager for Dade County, Florida, et al.,

Defendants.

ORDER GRANTING MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT

THIS CAUSE came before the Court on February 8, 1984 pursuant to notice on Defendants' motion to dismiss, and the Court having considered Plaintiffs' first amended complaint, having heard argument of counsel, having reviewed the memoranda prepared by the adverse parties, being adequately advised concerning the applicable authorities, concludes:

1. That the touchstone of Florida Statutes implementing the Article VII, Section 6, Florida Constitution, homestead exemption from ad valorem taxation is the "[i]ntention to establish a permanent residence in this state." Section 196.015, Florida Statutes.

2. That the matter *sub judice* is controlled by the decision of the Supreme Court of Florida in *Juarrero v. McNayr*, 157 So.2d 79 (Fla. 1963), where the Court reasoned:

> It is true that a resident of another state in this country may abandon residence in that state, come

> to Flor[illegible]a, purchase a home, reside in it, and declare it to be his permanent residence and become entitled to the homestead exemption provided by Section 7, Article X of our Constitution. Such person must make such declaration "rightfully" and in "good faith." This might also be true in the case of one from another country, who is in this country with a permanent resident visa. Such persons have the freedom and right with certainty to make and declare a bona fide intention of permanent residence in the home owned and located in this state. This is not so, however, in the case of a citizen and former resident of a foreign country who is here under the authority of nothing more than a temporary visa, because such person has no assurance that he can continue to reside in good faith for any fixed period of time in this country. Consequently, we hold he cannot "legally," "rightfully" or in "good faith" make or declare an intention which he has no assurance he can fulfill or carry out because of the temporary nature of the visa. In other words, he does not have the legal ability to determine for himself his future status and does not have the ability legally to convert a temporary residence into a permanent home.

Id. at 81. Quoted with approval on a certified question of law, *Matter of Cooke,* 412 So.2d 340, 343 (Fla. 1982), adopted per curiam by the United States Court of Appeals, 683 F.2d 130 (5th Cir. 1982)

3. That the Plaintiffs are alleged to be "Haitian immigrants lawfully admitted to the United States as parolees as especially applied to Cuban-Haitian Entrants" (First Amended Complaint paragraph 4) who do not have "permanent resident alien status" (*id.* paragraph 34). As such, Plaintiffs are legally incapable of declaring a Florida home their permanent residence.

4. That on the facts alleged, Plaintiffs' legal incapacity to declare themselves permanent residents of the State of Florida precludes their stating a cause of action for homestead exemption from ad valorem taxation. It is therefore

ORDERED AND ADJUDGED:

1. That Defendants' motion to dismiss is granted;

2. That Plaintiffs' First Amended Complaint, is hereby dismissed with prejudice.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 16th day of February, 1984.

/s/ David L. Levy
CIRCUIT JUDGE

Copies furnished to:

Barbara Staros Harmon, Esq.
Daniel A. Weiss, Esq.
John R. Greenwood, Esq.

IN THE CIRCUIT COURT FOR THE
11TH JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 83-38353

LOUIS LIPHETE and DIANE MITIAL,

Plaintiffs,

vs.

MERRITT STIERHEIM, as County Manager for Dade County, Florida; FRANKLIN B. BYSTROM, as Property Appraiser for Dade County, Florida; and P. RANDY MILLER, as Director of the Department of Revenue for the State of Florida,

Defendants.

FIRST AMENDED COMPLAINT

PRELIMINARY STATEMENT

1. This is an action for injunctive and declaratory relief alleging that the Defendants' denial of Plaintiffs' homestead tax exemption benefits is in violation of Sections 196.012 (17), 196.015, 196.031, 196.051, Florida Statutes (1981), and alleging that the Defendants' denial of Plaintiffs' homestead tax exemption benefits because they are not in possession of a permanent resident alien card is unconstitutional as violative of 42 U.S.C. § 1981, 42 U.S.C. § 1983, the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, and Article 1 § 8 Clause 4 of the Constitution of the United States. By this action, Plaintiffs seek a declaration that they are entitled to a homestead tax exemption, and seek to enjoin the collection of taxes in the amount of said homestead tax exemption.

JURISDICTION

2. This action for declaratory and injunctive relief is brought under Chapter 86, Florida Statutes as required by § 196.151 Florida Statutes (1981).

PLAINTIFFS

3. Plaintiffs Louis Liphete and Diane Mitial own and reside in their home at 100 NW 75th Street, Miami, Dade County, Florida. They have resided in the State of Florida since March 29, 1978. They have owned and resided in their home at the above described address from November, 1982, to date.

4. Plaintiffs, Louis Liphete and Diane Mitial are Haitian immigrants lawfully admitted to the United States as parolees as especially applied to Cuban/Haitian Entrants, and are authorized by Executive policy to remain in the United States and to continue to reside, in good faith, permanently in this country.

DEFENDANTS

5. Defendant, Merritt Stierheim, is the County Manager of Dade County, Florida, and is charged with the duties and functions of tax assessor, pursuant to Section 8A of the Charter of Dade County, Florida and Section 2-69 of the Dade County Code.

6. Defendant, Franklin B. Bystrom, is the Property Appraiser for Dade County, Florida, charged with enforcement and administration of all tax exemptions on real property and specifically that exemption known as the homestead exemption.

7. Defendant, P. Randy Miller, is the Director of the Department of Revenue of the State of Florida, and pursuant to § 20.21, Florida Statutes (1981) is charged with the management and enforcement of the fiscal and taxation affairs of the State of Florida, including supervision of County Tax assessments.

FACTUAL ALLEGATIONS

8. Article 7, Section 6 of the Florida Constitution as revised in 1968 and subsequently amended provides that:

> (a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependant upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.

9. Section 196.051 Florida Statutes (1981) provides the definition for permanent resident as applied to the homestead exemption and reads as follows:

> The words "resident", "residence", "permanent residence", "permanent home" and those of like import, shall not be construed so as to require continuous physical residence on the property, but mean only that place which the person claiming the exemption may rightfully and in good faith call his home to the exclusion of all other places where he may, from time to time, temporarily reside.

10. Although Plaintiffs are eligible for a homestead tax exemption and satisfy all the requirements for said exemption, the Property Appraiser, and the Property Appraisal Adjustment Board, have denied the homestead tax exemption to Plaintiffs.

11. Plaintiffs, Louis Liphete and Diane Mitial pay state and federal taxes in Florida. Plaintiff Louis Liphete possesses a Florida Operators License and his car is registered and titled in Florida. Plaintiffs are employed in Florida. Plaintiffs have made formal statements by sworn affidavit that they intend to make their permanent home in Florida.

12. Plaintiffs are refugees from their native land and have no present intent to return to Haiti and no intent to live anywhere else other than the State of Florida.

13. Plaintiffs Louis Liphete and Diane Mitial have no residence other than their home which they own and in which they live.

14. Plaintiffs Louis Liphete and Diane Mitial, as homeowners, are bona fide residents of Florida and have satisfied all the requirements for a homestead exemption in Florida.

15. Plaintiffs Louis Liphete and Diane Mitial, on or before March 1, 1983, filed their application for a homestead tax exemption, with the Property Appraiser for Dade County, Florida.

16. On or about May 13, 1983, Plaintiffs Louis Liphete and Diane Mitial's application was denied and the reason for denial was "Failed to present permanent Visa

(resident) card". (A copy of said denial is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 1)

17. On or about July 19, 1983, a hearing was held before the Property Appraisal Adjustment Board at which time the Special Master, Peggy M. Fisher, received the sworn affidavits of Plaintiffs and heard argument of counsel for Plaintiffs.

18. On or about August 15, 1983, the County Attorney for Metro Dade submitted to the Special Master a Memorandum of Law in support of the Dade County Property Appraiser's denial of homestead exemption to Plaintiffs. (A copy of said Memorandum is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 2.)

19. On or about August 26, 1983, Counsel for Plaintiffs submitted to the Special Master a Memorandum of Law in response to the Memorandum submitted by the County Attorney. (A copy of this Memorandum is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 3).

20. On or about October 14, 1983, by written decision the Special Master found that Plaintiffs satisfied all the criteria for homestead exemption except for their lack of a permanent resident Visa and that "Regardless of the Special Master's views on these issues, the Master is bound by . . . . the Florida Supreme Court", and thereby denied Plaintiffs petition. (A copy of the decision of the Special Master is attached hereto and made a part hereof as Plaintiffs' Exhibit No. 4.)

21. Plaintiffs have exhausted all their administrative remedies.

22. As a result of the state's denial of Plaintiffs request for homestead tax exemption, granted to all other residents of Florida, Plaintiffs must pay a higher proportional share of real property taxes than do other residents.

FIRST CAUSE OF ACTION

23. Defendants are not entitled to deny state benefits because of Plaintiffs' alien status.

24. The denial of the benefits of the homestead tax exemption, based solely on the state's interpretation of the significance of the immigration status of Plaintiffs and on the state's interpretation of Executive Policy regarding Cuban-Haitian entrants interferes with Executive and congressional objectives for the regulation of immigration and is an unlawful exercise of state power in an area preempted by the Federal Government in violation of Article 1 Section 8, Clause 4 and the Supremacy Clause of the Constitution of the United States and 42 U.S.C. Section 1981 and 42 U.S.C. Section 1983.

25. Plaintiffs have retained attorneys to litigate this cause and are entitled to the award of a reasonable attorney's fee.

SECOND CAUSE OF ACTION

26. Plaintiffs reallege all the allegations of paragraphs 1 through 25 above as if fully set forth herein.

27. For the purposes of determining residency as defined by Sections 196.012(17), 196.015, and 196.051 Florida Statutes (1981), the state is impermissibly creating two classes of citizens, the first consisting of citizens and

permanent resident aliens, and the second consisting of aliens lawfully present in the United States under color of law. Although their indicia of permanent residence pursuant to Sections 196.015, and 196.031 Florida Statutes (1981) may be identical, the state has imposed an additional burden on the second class, not reasonably related to the question of permanent residence for state tax purposes.

28. Setting up classes identical in all respects save the perceived immigration status of the second class, to the benefit of the first class and the detriment of the second, violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. Secion 1981 and 42 U.S.C. Section 1983.

THIRD CAUSE OF ACTION

29. Plaintiffs reallege all the allegations of paragraphs 1 through 28 above as if fully set forth herein.

30. The denial of a homestead tax exemption interferes with the right to travel guaranteed Plaintiffs by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, and 42 U.S.C. § 1981 and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

31. Plaintiffs reallege all the allegations of paragraphs 1 through 30 above as if fully set forth herein.

32. Plaintiffs are bona fide residents of the State of Florida.

33. At the hearing held before the Property Appraisal Adjustment Board on August 19, 1983, the Plaintiffs filed affidavits plainly indicating that they have the intention to be permanent residents of the State of Florida. Plaintiffs also filed copies of the Executive policy granting them permission to remain in the United States on a permanent basis.

34. Defendants, however, have created a permanent irreversible and irrebuttable presumption that an alien who does not have permanent resident alien status with INS, cannot be a resident of the State of Florida for homestead tax exemption purposes.

35. Defendants' presumption is not necessarily true.

36. The Plaintiffs have a constitutional right, as guaranteed by the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, to controvert that presumption of non-residence; and when they controvert that presumption, to have their application granted.

37. Defendants' actions violate Plaintiffs' rights, as guaranteed by 42 U.S.C. § 1981, 42 U.S.C. § 1983, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

FIFTH CAUSE OF ACTION

38. Plaintiffs reallege all the allegations of paragraphs 1 through 37 above as if set forth fully herein.

39. The action of Defendants in denying the homestead tax exemption to Plaintiffs despite their satisfaction of all the requirements of said exemption is an un-

lawful taking of Plaintiffs' property in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

SIXTH CAUSE OF ACTION

40. Plaintiffs reallege all the allegations of paragraphs 1 through 39 as if set forth fully herein.

41. Plaintiffs are bona fide permanent residents of the State of Florida and are entitled to homestead tax exemption benefits.

42. Defendants' action in denying homestead tax exemption benefits to Plaintiffs is in violation of Sections 196.012(17), 196.015, 196.031, and 196.051, Florida Statutes (1981).

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray as follows:

a. That this Court enter a declaratory judgment, declaring that the denial of Plaintiffs' homestead tax exemption benefits because they are not in possession of a permanent resident alien card is unconstitutional as violative of Article 1 Section 8 Clause 4, the Supremacy Clause of the Constitution of the United States, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States, and violates Plaintiffs' right pursuant to 42 U.S.C. Sections 1981 and 1983.

b. That this Court enter a declaratory judgment declaring that Plaintiffs are permanent residents of the State of Florida and are entitled to homestead tax exemption under the Florida Constitution and applicable statutes.

c. That this Court enjoin the Defendants from collecting tax on the portion of Plaintiffs' property exempted by the homestead tax exemption.

d. Reimbursement of the costs of this suit.

e. Award Plaintiffs a reasonable attorneys' fee.

f. Such other and further relief as this Court deems proper.

Respectfully submitted,

Haitian American Community Association
of Dade (HACAD), Inc. Service Center
/s/ John R. Greenwood, Esq.
Jonathan Thiele, Esq.
Attorneys for Plaintiffs
5901 NW 2nd Avenue
Miami, Florida 33127
(305) 751-3429

Ira Kurzban, Esq.
of Counsel

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing First Amended Complaint was mailed this 16 day of November, 1983, to P. Randy Miller, Room 102, Carlton Building, Tallahassee, Florida 32301; Franklin B. Bystrom, Property Appraiser, 140 West Flagler Street, Room 1004, Miami, Florida 33130; and, Merritt Stierheim, County Manager, 73 West Flagler Street, Room 911, Miami, Florida 33139.

By /s/ John R. Greenwood, Esq.
Attorney for Plaintiffs

SEQUENCE #10

SPECIAL MASTERS FINDINGS OF FACT
CONCLUSIONS OF LAW
RECOMMENDATIONS TO
PROPERTY APPRAISAL ADJUSTMENT BOARD
L-E-G-A-L I-S-S-U-E-S

.811. ———
01-3112-44-0010-5

LIPHETE LOUIS
LOUIS LIPHETE
100 NW 75TH ST
MIAMI FLA 33150

PROPERTY ADDRESS 100-02 N.W. 75 ST.
DATE 7/19/83 TIME 8:30 ROOM #B
TYPE PROP:——— ZONING———
— HOMESTEAD —AGRICULTURE —PERSONAL PROPERTY —OTHER ———————

1983 TAXABLE TOTALS—PRELIMINARY TAX ROLL VALUATION—*BEFORE* APPLYING EXEMPTIONS—$27,054; EXEMPTIONS APPLIED—HOMESTEAD EX. $ -0-; *AFTER* EXEMPTIONS ARE DEDEDUCTED—$27,054.

FINDINGS OF FACT

	YES	N/A	NO	(N/A . . . Not Applicable)
a	✓			Taxpayer's application for exemption was filed (received) on/or before March 1, 1983.
b		✓		Taxpayer's property used for bona fide agricultural purposes.
c		✓		Taxpayer's failure to file on/or before March 1, 1983 was due to a condition which disabled him or kept him from hav- others file for him.
d	✓			Taxpayer had legal, or equitable title of property on January 1, 1983.
e			✓	Taxpayer resided and made property his permanent home on January 1, 1983.
f			✓	Taxpayer's legal or natural dependents resided on property on January 1, 1983.
g		✓		Taxpayer's submitted required evidence of Total & Permanent Disability.
h		✓		Taxpayer, a veteran, was honorably discharged with Total and Permanent Disability.
i		✓		Income of all persons residing in/on homestead does not exceed $8,200.
j		✓		Taxpayer is a non profit organization or corporation.
k		✓		Property used predominantly for charitable, religious, scientific, literary, or governmental purpose.
l		✓		Taxpayer is an accredited educational institution and used property strictly for educational purposes.

m ..... Other .....

1. — Taxpayer ✓ Agent —No Show —Withdrawn — Accepted P.A. Recommended.

2. Taxpayer or Agent Appeared and Contested the following: See Attached.

3. The Property Appraiser's Denial of Exemption was Based Upon: No Permanent Resident Alien Card.

4. Summary of Evidence Proffered at Hearing:

A. By Property Appraiser's Office:

B. By Taxpayer:

5. Basic and Underlying Facts:

✓ Denial of Exemption Correct: Insufficient or No Evidence Offered to the Contrary.
Recommended Change: (Explain)

6. Other Issues and Findings: Executive Order (President of U.S.) giving Status to Cuban/ Haitian Entrants

CONCLUSIONS OF LAW

7. Ultimate Findings: Taxpayer — IS ..... Taxpayer ✓ IS NOT ..... entitled to requested exemption.

8. Based on the Foregoing, It Is Recommended that the taxpayer's petition, and the requested exemption ✓ be Denied ..... — Be Approved .....

EXEMPTIONS APPLIED

SPECIAL MASTER'S RECOMMEND.—*BEFORE* APPLYING EXEMPTIONS—$27,054; EXEMPTIONS APPLIED—NONE; *AFTER* EXEMPTIONS ARE DEDUCTED—$27,054.

9/14/83 — Date Completed by S.M.

/s/ Peggy Fisher — Special Master's Signature

Administrative Notations ..... S.M.'s decision deferred for the following reason.

✓ Further deliberation required by Special Master. Comments:

— Additional information to be submitted to S.M. by petitioner no later than

(Illegible)
(Illegible)

Juarrero—No immigrant visa.

C/H entrants by virtue of Exec. Order, gives them authority to remain in U.S.

(Elkins v. Moreno)

Toll v. Moreno—Individual who had the ability to adjust status, could be permanent residents for school purposes. 435 U.S. 647.

Plyler v. Doe—Prohibited distinction based upon alienage.

Exec. Order—June 20, 1980 Fed. Register.

INS order prohibiting exclusion hearings.

Executive Order provides "temporary safehaven."

Plyler v. Doe is inapplicable to this case in that the public school education cannot be compared to a homestead exemption, either in importance to the Petitioners, nor in the benefit to the community.

Elkins v. Moreno required the determination of state residency to be decided by the State (Maryland) Courts. The Florida Supreme Court in *The Matter of Cooke,* has clearly declined to extend state residency for homestead purposes to aliens having a visa which is not permanent in nature. The Special Master is unable to find language which would distinguish Florida residency for homestead exemption from forced sale from the exemption from ad valorem taxes. Regardless of the Special Masters views on this issue, the Master is bound by this recent ruling from the Florida Supreme Court. Petition is thus denied.

AFFIDAVIT

State of Florida, County of Dade, ss

AFFIANT, after being duly sworn by the undersigned, states the following:

1. My name is Louis Liphete.

2. I am the owner and have legal title to real property located at 100 NW 75th Street, Miami, Florida.

3. Said property is my permanent residence in which I intend to continue to live and raise my family. Neither myself nor my family have any other residence. This property was bought at great financial sacrifice to myself and my family in order that we might have a permanent and stable environment in which to live and raise our family.

4. Since my arrival in Florida on March 29, 1978, I have lived in Miami, Florida, and, I have considered and intended this to be my permanent home. I have abandoned my previous residence in Haiti as a result of the political oppression and economic exploitation in that country.

I have no intention of returning to Haiti.

5. I am presently employed and have been since 1978 at SANITARY LINEN AND UNIFORM SERVICE, 253 NW 22nd Lane, Miami, Florida.

6. I am not registered to vote because I am not a United States citizen but I intend to become a United States citizen and register to vote here in Miami, Florida, as soon as I am able to do so.

7. I am the holder of a Florida drivers license no. L130-532-46-050 which was issued at Miami, Florida in 1979.

8. I own a motor vehicle, Florida license tag no. GBG 927 which was issued at Miami, Florida.

9. Since my arrival in 1978 I have been employed in Miami, Florida and have paid my federal income tax returns from Miami, Florida.

10. I am a Cuban/Haitian Entrant, A# 21-134-978, and by Executive Order of the President of the United States of America, dated June 20, 1980, I have permission to remain in the United States on an indefinite basis. A bill is presently pending in the Congress of the United States which would allow me to obtain Permanent Resident Status.

FURTHER AFFIANT sayeth not.

/s/ Louis Liphete

Sworn to and subscribed before me this 18 day of July 1983.

/s/ James C. Gregory
Notary Public

My Commission expires: August 6, 1986.

AFFIDAVIT

State of Florida, County of Dade, ss

AFFIANT, after being duly sworn by the undersigned, states the following:

1. My name is Diane Missial.

2. I am the owner and have legal title to real property located at 100 NW 75th Street, Miami, Florida.

2. Said property is my permanent residence in which I intend to continue to live and raise my family. Neither myself nor my family have any other residence. This property was bought at great financial sacrifice to myself and my family in order that we might have a permanent and stable environment in which to live and raise our family.

4. Since my arrival in Florida on March 29, 1978, I have lived in Miami, Florida, and, I have considered and intended this to be my permanent home. I have abandoned my previous residence in Haiti as a result of the political oppression and economic exploitation in that country. I have no intention of returning to Haiti.

5. I am presently employed and have been since my arrival in this country in 1978 at a variety of factory jobs. I am currently employed at 101 NW 24 Street, Miami, Florida.

6. I am not registered to vote because I am not a United States citizen but I intend to become a United States citizen and register to vote here in Miami, Florida, as soon as I am able to do so.

7. I am the holder of a Florida drivers license no. ..... which was issued at NOT APPLICABLE.

8. I own a motor vehicle, Florida license tag no..... which was issued at NOT APPLICABLE

9. Since my arrival in 1978 I have been employed in Miami, Florida and have paid my federal income tax returns from Miami, Florida.

10. I am a Cuban/Haitian Entrant, A# 21 137 021, and by Executive Order of the President of the United States of America, dated June 20, 1980, I have permission to remain in the United States on an indefinite basis. A bill is presently pending in the Congress of the United States which would allow me to obtain Permanent Resident Status.

FURTHER, AFFIANT sayeth not.

/s/ Diane Mitial

Sworn to and subscribed before me this 18 day of July 1983.

/s/ James C. Gregory
Notary Public

My Commission expires: August 6, 1986.

(SEAL)

NOTICE OF DISAPPROVAL OF APPLICATION FOR HOMESTEAD EXEMPTION BY THE COUNTY PROPERTY APPRAISER

May 13, 1983

Petition Number 01 3112 44 0010 5
PARCEL NUMBER (may be shown in lieu of property description)

TO

Louis Liphete
100 N.W. 75 St.
Miami, Fl. 33150

PROPERTY DESCRIPTION:

REASON FOR DENIAL:

Failed to present permanent visa (resident) card.

Exemption(s) Denied: [ ] Homestead $5,000

[X] Homestead $25,000

You are hereby notified that after due consideration I find you not to be entitled under the law to the tax exemption for which you have previously applied for the following reasons, to-wit:

[ ] Applicant did not meet residency requirements as of January 1st.

[ ] Applicant did not have legal or beneficial title to property claimed as homestead as of January 1st.

[ ] Applicant did not, in good faith, make the property claimed as homestead his permanent residence as of January 1st.

[X] Applicant did not meet other statutory requirements. See xxxxxxxxxx above.

A copy of this notice will be filed with the clerk of the (board of county commissioners) (governing body) of this county which shall constitute an appeal to the Property Appraisal Adjustment Board without further action on your part.

The clerk will notify you of the scheduled time at which you may appear before the Property Appraisal Adjustment Board no less than five calendar days prior to the day of such scheduled appearance, to be heard in behalf of your right to such exemption.

I hereby certify that a copy of the foregoing notice was served upon the above named applicant for homestead exemption by (personal delivery) (registered mail) to the post office address above, being the same as that given by the applicant and the original filed with the clerk of the (board of county commissioners) (governing body) of the county in which I am Appraiser on May 13, 1983.

Franklin B. Bystrom
Appraiser

Dade
County, Florida

TAXPAYER'S COPY

NOT FINAL UNTIL TIME EXPIRES
TO FILE REHEARING MOTION
AND, IF FILED, DISPOSED OF.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA

THIRD DISTRICT

JANUARY TERM, A. D. 1984

CASE NO. 83-2447

ANCEL ALCIME and ELUCIA ALCIME,

Appellants,

vs.

FRANK BYSTROM, as Property Appraiser of Dade COUNTY, FLORIDA,

Appellee.

Opinion filed June 26, 1984.

An Appeal from the Circuit Court for Dade County, Frederick N. Barad, Judge.

Bennett D. Fultz and Jose I. Perez, for appellants.

Robert A. Ginsburg, County Attorney and Daniel A. Weiss, Assistant County Attorney, for appellee.

Before BARKDULL, BASKIN and FERGUSON, JJ.

FERGUSON, Judge.

Notwithstanding the fact that Ancel Alcime has resided in the United States for over twenty years, has resided in the State of Florida for ten years, and has been employed in local government for over six years, because he is an alien without a permanent visa, he cannot, under

the prevailing interpretation of the applicable statute,[1] prove an intention to become a permanent resident of the state for homestead tax exemption purposes. *See Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963); *cf. Matter of Cooke,* 412 So.2d 340 (Fla. 1982) (relying on *Juarrero,* court ruled that foreigner who does not hold permanent visa cannot be a permanent resident of this state and thus cannot place residence 'owned in state beyond reach of creditors under homestead exemption from forced sale). Appellants are thus ineligible for a homestead exemption from ad valorem taxes.

Affirmed.

---

1. Section 196.012(16), (17), Florida Statutes (1981) provides:

(16) "Permanent resident" means a person who has established a permanent residence as defined in subsection (17).

(17) "Permanent residence" means that place where a person has his true, fixed, and permanent home and principal establishment to which, whenever absent, he has the intention of returning. A person may have only one permanent residence at a time; and, once a permanent residence is established in a foreign state or country, it is presumed to continue until the person shows that a change has occurred.

Family Name (Cap. Letters) Given Name Middle Name
LIPHETE, LOUIS

Country of Citizenship	Passport No. & C. of Issue	File No.
Haiti	510/12 Haiti	A21134 978

U.S. Address (Residence) (No.) (Str.) (Cty.) (St.) (Zip)
50 NW 26 St. No. 1 Miami, Fla.

Date, Place, Time, Manner of Last Entry	Pass. Brd. At
3-29-78 MIA B-2	Nassau

No. Str., Cty., Province (St.) and Country of Per. Resid.
Cote De illegible Haiti

Birthdate	Date of Action	Location Code
2-10-46	1-20-79	MIA.

Cty. Prv. (St.) and Cntry. of Birth	AR Form (Type & No.)	
Cote De illegible, Haiti	☐ ☒ Lifted	1-94 ☐ Not Lifted

Visa Issued At—NIV No.	Social Security Acct. No.
UNK	UNK

Date Visa Issued	Social Sec. No.	Send G.O. Rec. Chk. To:
		MIA

CUBAN/HAITIAN ENTRANT (STATUS PENDING)
REVIEWABLE JANUARY 15, 1981
EMPLOYMENT AUTHORIZED UNTIL
JANUARY 15, 1981

You are required to retain this permit in your possession and to surrender it to the transportation line at the time of your departure unless you depart over the land border of the United States in which case you must surrender it to a Canadian immigration officer on the Canadian border, or to a United States immigration officer on the Mexican border.

DEPARTURE RECORD

PORT—Released OR

DATE: Pending OSC

Employment authorized until 7/7/80 and only in the State of Florida.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration And Naturalization Service
Form Approved OMB NO. 40-RO496
ARRIVAL-DEPARTURE RECORD
Form I-94 (Rev. 9-1-73)

PP AA INPOS.
008 13:25:47 11/10/80
Fm Commr INS Washington, D.C.
To All INS Regional Offices (ROEXM, RODDP)
All INS District Directors
All INS File Control Offices
All INS Border Patrol Headquarters

Received Nov. 10, 1980

Office of District Director
Immigration and Naturalization Service
JFK Federal Building
Boston, Mass.

Hi
Priority . . .

ROCOM(ROEXM, RODDP). Re: Wire, Project 069, dated July 3, 1980 and July 18, 1980 with respect to *Cuban/Haitian aliens. The cutoff date granting "Cuban/Haitian entrant, (status pending) through January 15, 1981 has been advanced from June 19, 1980 to midnight October 10, 1980.* Therefore, as stated in the July 3, 1980 wire and clarified in the July 18, 1980 wire, all *Cubans who arrived in the United States during the period April 21, 1980 to midnight October 10, 1980 and all Haitians who were in INS proceedings as of midnight October 10, 1980 will be paroled or granted extended voluntary departure or stay of deportation, as appropriate, until January 15, 1981 and granted employment authorization, all affected Cuban and Haitian aliens will be called into district and files control offices having jurisdiction.* The aliens Form I-94 will be stamped as outlined in the July 3, 1980 wire. Any OSC that may have been issued for a Haitian placed under deportation proceedings during the period June 19, 1980-October 10, 1980 will be cancelled, any Cuban or Haitian alien, except excludable Haitians processed in the Miami Dis-

trict, who is *encountered* on or after October 11, 1980 and who is then determined to be illegally in the United States, will be processed under normal exclusion or deportation proceedings as appropriate. For example, a Haitian who entered as a B-2 visitor and was apprehended (encountered) out of status on or after October 11, 1980 will be processed under normal deportation *proceedings* and will not be protected by the President's directive. The cases encountered on or after October 11, 1980 and placed under docket control will be reported to CODDP as outlined in the July 18, 1980 wire. The first report will contain all cases placed under docket control from October 11, 1980 through November 30, 1980. Each region will consolidate the district information and submit a consolidated report in a cover memo with the region's monthly CDD-34 reports. In each of these cases, an I-154 or I-161 will be executed as appropriate. In exclusion proceedings, the I-154 will be stamped *"exclusion"* diagonally across the card. All docket cards on Cuban/Haitian aliens encountered on or after October 11, 1980 will be maintained separately from other docket cards and will be divided into a "Cuban" category and a "Haitian" category, no exclusion hearing may be commenced against any excludable Haitian *processed through the Miami district office,* no matter where encountered, arriving on or after *October 11, 1980* due to the court order in *Sammon vs. United States.* Said aliens will be paroled for a period of 60 days and granted work authorization. "Cuban/Haitian entrant (status pending)" should not be given to Haitians who are excludable or deportable for other than documentary reasons (e.g. those who have committed crimes involving moral turpitude, narcotics offenders, etc.). Such aliens

may be placed in exclusion proceedings unless covered by the court order in Shannon v. INS or Deportation Proceedings (unless they had asylum claims pending with or denied by, the INS district office in Miami on or before May 9, 1979). However, the appropriate regional commissioner should be notified and approve before proceedings are instituted in such cases. BENED all regions BETIL DIDIRS, BPSH, FCO's et.

UNITED STATES SOCIAL SECURITY OFFICE
WASHINGTON, D.C. 20201

URGENT — PROGRAM INSTRUCTION
ACTION TRANSMITTAL SSA-AT-80-24 (OFA)

June 27, 1980

TO: State Administrative and Other Interested Agencies and Organizations.

SUBJECT: Newly Designated Immigration and Naturalization Service (INS) Alien Status for Cuban/Haitian Entrants.

REFERENCE: 45 CFR 233.50. SSA Action Transmittal 78-14(OFA).

PURPOSE: This Action Transmittal clarifies that otherwise eligible persons designated by INS with the alien status of *"CUBAN/HAITIAN ENTRANTS (STATUS PENDING)"* are eligible for benefits under Titles I, IV-A, X, XIV, and (AARD) of the Social Security Act.

PROGRAM APPLICABILITY: Old Age Assistance
Aid to Families with Dependent Children
Aid to the Blind
Aid to the Permanently and Totally Disabled
Aid to the Aged, Blind, and Disabled.

BACKGROUND: On June 20, 1980, the United States Coordinator for Refugee Affairs announced the Administration's initiatives to help alleviate the plight of the Cubans who have arrived in the United States since April, and of the Haitians who are currently undergoing proceedings with the INS.

The significant elements in the Administration's initiatives are:

(a) Cuban entrants who arrived in the United States during the period April 23 to June 19, 1980, and

who are in INS proceedings as of June 19, and all Haitians who are in INS proceedings as of June 19, 1980, will have their status in the United States reviewed every six months. A new INS alien status designation is to be assigned:

"CUBAN/HAITIAN ENTRANTS (STATUS PENDING)."

(b) This new designation will entitle these Cubans and Haitians, if otherwise eligible, to AFDC and other Federal and federally matched public assistance programs' benefits. If a person with Cuban/Haitian entrant status is residing in a government processing center, the State must consider the benefits provided at the center in accordance with its State plan provisions and policies on in-kind and other types of income. Normal Federal/State matching will apply.

(c) These Cuban or Haitian aliens must present the proper INS documents in order to meet the alien status factor of eligibility. Cubans and Haitians who do not have either the documentation identified in the Instruction or in AT-78-14 are not eligible for AFDC, OAA, AB, APTD and AABD.

(d) Cuban and Haitian entrants arriving after June 19, 1980, will be processed under normal INS procedures. They will *NOT* receive this new immigration status. Thus, they will be eligible for assistance only to the extent that they qualify under the normally assigned INS designations outlined in SSA — Action Transmittal — 78-14, dated April 17, 1978.

The Administration plans to propose special legislation providing for a permanent adjustment in the alien status of this group of Cuban/Haitian aliens.

INSTRUCTION: Cubans who entered the United States during the period April 21 to June 19, 1980, and Haitians who are in INS proceedings as of June 19, who have received the INS status of *"CUBAN/HAITIAN ENTRANTS (STATUS*

PENDING)," are eligible for assistance if they meet all of the other eligibility factors. They are considered to be permanently residing in the United States under the color of law and meet the requirements of 45 CFR 233.50.

In order to identify clearly the group included within the Administration's directive, the INS will stamp the Forms I-94 currently in the possession of those aliens with the following: "CUBAN/HAITIAN ENTRANT (STATUS PENDING) REVIEWABLE JANUARY 15, 1981. EMPLOYMENT AUTHORIZED UNTIL JANUARY 15, 1981." This stamp will be uniquely identifiable with that group. The INS believes that it will take approximately three

(3) weeks to reissue new documents to these aliens entitling them to meet the alien eligibility factor for benefits.

INQUIRIES TO: SSA Regional Commissioners.

/s/ Thomas Higgins
Associate Commissioner
for Family Assistance

TELEGRAPHIC MESSAGE

Name of Agency (Illegible) Security Classification
Action Priority Unclassified

(Balance of Heading Illegible)

P.M.: SSA, Office of Operational Policy and Procedures, Baltimore, Maryland.

TO: All SSA Regional Commissioners.

TO: All SSA Assistant Regional Commissioners, Illegible, PA., Illegible.

TO: All SSA Program Service Centers.

TO: All SSA Offices/Field/Central Office.

TO: All Area Directors.

TO: All SSADBS/SSASOS/SSATSCS/SSADARS.

TO: All SDDS.

Emergency Instruction OAP-80- IT- -60
SJ5-2-1.

Extensive reproduction unnecessary as manualized instructions will follow shortly.

Subject: SSI eligibility for recently arrived Cuban and Haitian entrants CH 2333.

On June 20, 1980, the administration approved procedures adjusting the status of certain Cuban/Haitian aliens. The President has decided that the Cubans who arrived in the U.S. during the period April 21-June 19, 1960 and who are in Immigration and Naturalization Service (INS) proceedings (I.E., filed an application with INS to remain indefinitely in the U.S.) as of June 19, 1980 and all Haitians who are in INS proceedings as of

TELEGRAPHIC MESSAGE

Name of Agency (Illegible) Security Classifcation
Action Priority Unclassified
(Balance of Heading Illegible)

June 19, 1980 will have their parole renewed as "Cuban/Haitian Entrant-Status Pending." This status is effective beginning with the issuance of the stamped I-94.

The stamped I-94 constitutes evidence of permanent residence in the U.S. under color of law. Under regulations at U.C.F.R. 416.204 illegible. With this status, Cubans and Haitians, if they otherwise qualify, will be eligible for SSI and, under the Rules of the States in which they are residing, Medicaid, AFDC, Emergency Assistance. States will receive the usual Federal/State matching.

In order to qualify for this status, Cuban and Haitian Entrants must first report to INS for annotation of their Parole Documents. Their INS Form I-94 will be stamped with the legend "Cuban/Haitian Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981." Every effort should be made to screen out persons who are clearly ineligible. Follow the oral inquiry procedure in CH 12101.1 for individuals who claim this special status but do not have a properly annotated 1-94 in their possession and/or are otherwise ineligible for SSI. Persons who inquire about obtaining an 1-94 should be referred to INS.

Eligibility exists when the person has been a resident of the U.S. for 30 days, has a properly stamped 1-94 in his or her possesion and controls NSA to file a claim and meets all other SSI eligibility requirements. These conditions must be met to establish SSI eligibility.

Current Policy No. 193

CUBAN-HAITIAN ARRIVALS IN U.S.

June 20, 1980

United States Department of State

Bureau of Public Affairs
Washington, D.C.

Following is a statement by Victor H. Palmieri, U.S. Coordinator for Refuges Affairs, at a State Department press briefing on June 20, 1980.

For more than two decades south Florida has been providing a haven for Cubans fleeing from Castro's repressive policies and Cuba's failing economy. In recent years, it has also become an entry point for thousands of Haitian "boat people." In the last 2 months, more than 114,000 Cubans have entered south Florida by boat.

The sudden and disorderly arrival of these Cubans on our shores without proper documentation has presented this country with an unprecedented political and humanitarian challenge. Under international law, we have an obligation to provide temporary refuge to arrivals claiming a well-founded fear of persecution in their homeland. Under previous U.S. law, we did in fact provide a permanent haven to almost 800,000 Cubans fleeing Communism under Castro. Several factors, however, have determined the way we have responded to this extraordinary emergency and the strains it has created in south Florida.

First, those Cubans admitted in past years arrived under an orderly departure program that involved interviews and reviews of documentation before departure from Cuba. This allowed a careful screening process in accordance with U.S. immigration laws. This has not occurred with the current Cuban or Haitian entrants.

Second, our refugee and asylum provisions are now governed by new legislation, the Refugee Act of 1980, which came into effect on April 1 of this year. The Refugee Act established a framework for selecting groups of refugees overseas for admission to the United States, as well as for granting asylum to individuals already in this country who can demonstrate a well-founded fear of persecution if they were to return to their country of origin. But this legislation did not contemplate the kind of situation we face now, with a sudden massive influx, without overseas processing and valid documentation. The procedures for dealing with asylum seekers in this country require lengthy examinations on a case-by-case basis that would leave many arrivals in limbo status for long periods, without eligibility for federally funded assistance. And the strict standards for asylum would prevent many of the Cubans and Haitians from qualifying for admission under that category.

This is clearly an intolerable situation for the Cuban and Haitian entrants as well as for the States that are receiving and resettling them, particularly the State of Florida. To date, the Cuban-American community and the voluntary resettlement agencies have generously assisted these exiles. But they can no longer bear this burden alone, especially since those being released from the processing

centers are increasingly persons without relatives in this country. The size of this special population and the difficulty of returning them to their homelands or resettling them in other countries make it all the more important to clarify their status and eligibility for some forms of federally funded assistance.

In order to redress this extraordinary situation, yet maintain the integrity of our refugee laws for those applying for admission in the prescribed manner, the President has decided to seek special legislation regularizing the status of Cuban-Haitian entrants. This legislation will allow them to remain in the United States and will make them eligible for certain benefits, but it will not provide the status or benefits accorded to those admitted as refugees or granted political asylum.

U.S. Steps

Until this legislation is enacted, we will take the following steps to deal with the special needs of the communities in which the Cuban-Haitian entrants relocate and to prevent the occurrence of such crises in the future.

• Cubans who have arrived in the United States during the period April 21-June 19, 1980, and who are in Immigration and Naturalization Service (INS) proceedings as of June 19, 1980, and all Haitians who are in INS proceedings as of June 19, 1980, will have their parole into the country renewed for a 6-month period as "Cuban-Haitian entrants (status pending)."

• Under this 6-month parole, these Cuban-Haitians will be eligible, if they otherwise qualify, for Supplemental Security Income (SSI—for the elderly and handicapped),

Medicaid, Aid to Families with Dependent Children (AFDC), and emergency assistance under the rules of the States in which they are residing and with normal Federal-State matching of funds. In order to qualify, Cuban-Haitian entrants must first report to the INS for their new parole documents. Procedures for applying for these benefits will be announced by INS and the Department of Health and Human Services next Friday, June 27.

• Minor children in camps without close relatives in this country will be provided English-language training, health services, counseling, and individualized planning for permanent placement.

• Per capita grants will be provided to private resettlement agencies for all persons leaving processing centers after June 19, 1980, and for Cuban-Haitian entrants being relocated out of the south Florida area after that date. In addition, funds will be provided to the resettlement agencies to provide employment counseling and referral services to all Cuban-Haitian entrants already released from camps or resettled directly into the Miami area.

• The President has already sought funding totaling $385 million to finance reception, processing, care and maintenance, transportation, initial relocation, health services, and educational costs as part of the FY 1980 supplemental appropriation. The Administration will seek necessary funding for the continuation of this program in FY 1981.

• Special legislation will be submitted to the Congress as soon as possible to:

—Establish a "Cuban-Haitian entrant" status for recently arrived Cubans and Haitians;

—Define services and benefits for these arrivals for 1 year after release from processing centers;

—Provide SSI, Medicaid, AFDC, and emergency assistance under the rules of the States in which they are residing and with normal Federal-State matching of funds; and authorize retroactive reimbursement to States and localities for 75% of the total cost of other general assistance, medical assistance, special educational programs, and social services for 1 year;

—Provide for conversation to permanent resident alien status after 2 years;

—Improve future asylum processing, both to expedite case-by-case review, including exclusion and deportation, and to reduce the likelihood of future problems of this nature;

—Provide minor children without close relatives in this country English-language training, health services, counseling, and individualized planning for permanent placement. States will be reimbursed for 100% of the costs of maintenance and services provided to such unaccompanied minors until they reach the age of majority; and

—Seek a method to identify and extend "Cuban-Haitian entrant status" to those other Haitian "boat people" who have arrived in Florida prior to June 19, 1980, but who are not in INS proceedings.

• Criminals continue to be subject to detention and exclusion or deportation from the United States.

• Processing of applications for asylum will continue. Those who are granted asylum status will be eligible to adjust to permanent resident alien status after 1 year.

• U.S. Government enforcement agencies will continue to interdict boats bringing undocumented aliens into the United States. Enforcement will be maintained to prevent future illegal arrivals, and violators will be subject to civil or criminal prosecution in accordance with the President's declaration of May 14, 1980. Persons who arrive illegally after June 19, 1980, will not be eligible for the program and will be subject to exclusion or deportation in accordance with U.S. immigration laws.

All of these steps are consonant with the policy that the President outlined on May 14. Throughout this emergency, our objectives have been to uphold our international obligations and protect the integrity of our immigration and refugee laws. We have therefore sought to treat the arriving Cubans and Haitians in an equitable way by providing them temporary safehaven until their status can be resolved in this contry or until they are offered resettlement in other countries.

In the case of the Cubans, we have also tried to limit both the inhumane and hazardous conditions of their journey and their impact on communities in Florida by deterring the Cuban-American community from illegally bringing in any more undocumented Cubans. At the same time, we have pursued international efforts to negotiate with Castro to establish an orderly departure program to allow the humane and manageable departure of Cubans who qualify for admission to the United States under the Refugee Act of 1980.

To date, our efforts have virtually stopped the boat flotilla from Cuba. We hope that our enforcement measures will discourage others from undertaking the long and dangerous journey by boat in violation of our laws. The problem of undocumented aliens in the United States is clearly broader than the current Cuban-Haitian entrants, and it will have to be the subject of future policy decisions made in consultation with the Congress. We expect that the Select Commission on Immigration and Refugee Policy will be addressing the situation of Haitians who are not covered by the President's decisions I have announced today, as well as other documented aliens in this country.

Summary

In summary, the current Cuban-Haitian crisis is but a symptom of a world-wide trend toward greater dislocation and migration. In the past, the American people have responded generously to the plight of the uprooted. And our laws provide for the acceptance of large numbers of immigrants and refugees. In fact, we will be admitting over 600,000 this year.

However, there are millions more who would like to begin new lives in this country than we can accept. Our laws therefore establish numerical limits and require careful selection and processing prior to admission. Many applicants for admission have waited for years, and on arrival they have managed with little or no assistance from the Federal Government.

In the case of Cuba, we have long been the country of preferred asylum. We cannot stand by in silent witness to the unsafe and uncontrolled exodus from Cuba,

yet our laws do not allow us to accept for permanent resettlement any Cuban or Haitian who arrives here in this manner. While we work for the eventual return of those who are found inadmissable under our laws, particularly criminals, we must now find ways to resettle those whom common decency compels us to receive.

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INTERPRETER RELEASES

Information Service on Immigration, Naturalization and Related Matters

Maurice A. Roberts, Editor
Carolyn Waller, Asst. Editor

American Council For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 57, No. 25 June 30, 1980

RECENT SIGNIFICANT DEVELOPMENTS

Cubans and Haitians Receiving Temporary Respite
Final Extension to Sept. 28 Granted to Reluctant Nicaraguans
INS Issues Instructions on Asylum and Refugee Adjustments
Bernsen to Head Select Commission's Legal Research
Justice Dept. Challenges Discrimination Against Iranian Students by States
INS Amends Regulations on Free Legal Services List
Few Changes in Visa Numbers for July
New Publications Available
Seminar Tapes Available

Cubans and Haitians Receive Temporary Respite

Confronted by the growing number of Cuban and Haitian aliens who have recently sought refuge in Florida, the Carter administration has concluded that this sort of situation is not within the contemplation of the Refugee Act of 1980, 96-212, which went into effect on April 1, 1980. It will therefore not consider them as refugees within the meaning of that Act, but will instead seek special

legislation to cover the status of the Cuban and Haitian entrants. Pending enactment of such legislation, Cubans who arrived in the U.S. between April 21 and June 19, 1980 and are in INS proceedings as of the latter date, as well as all Haitians who are in INS proceedings as of June 19, 1980, will have their parole into the U.S. renewed for a 6-month period as "Cuban-Haitians (status pending)." This will qualify many of them for various forms of public assistance. Details are spelled out in the statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs, on June 20, 1980, reproduced in Appendix I of this *Release.*

Further details were announced by an INS press release dated June 26, 1980, which reads as follows:

> The Immigration and Naturalization Service today announced procedures under which most Cuban and Haitian aliens would be permitted to remain in the U.S. for an additional six months.
>
> Acting INS Commissioner David Crosland said extensions to January 15, 1981, will be granted to all Cubans and Haitians who were in INS proceedings as of June 19.
>
> Mr. Crosland said local INS offices will initiate procedures next week to recall Cubans and Haitians in an orderly manner and stamp their current identification card to show their new status.
>
> The stamp will read: "Cuban/Haitian Entrant (status pending) reviewable January 15, 1981. Employment authorized until January 15, 1981." Precautions are being taken to prevent forgeries.
>
> The procedure is in compliance with President Carter's previously announced policy to give Congress time in which to consider special legislation that would regularize the status of Cubans and Haitians known to be in the U.S. prior to June 19.

Under the proposed legislation arrivals after June 19 would not be eligible for the new status, Mr. Crosland said.

The INS said about 114,000 Cubans and 15,000 Haitians would be affected by the new order.

The INS Miami district office and other local offices will announce details next week as to when processing will begin, location of processing centers and the order in which persons may come to INS to have their documents stamped. Local offices will also contact voluntary agencies to provide them with details of the procedure.

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INTERPRETER RELEASES

An Information Service on Immigration, Naturalization and Related Matters

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American Council For Nationalities Service
20 West 40th St., New York, N.Y. 10018

Vol. 57, No. 41 October 23, 1980

RECENT SIGNIFICANT DEVELOPMENTS

President Expands Cuban-Haitian Entrant Program
President Delegates Refugee Relief Authority to Secretary of State
President Determines Refugee Numbers for Fiscal 1981
INS Corrects Error in INS Refugee Regulations
No Further Blanket Extension for Reluctant Nicaraguans
Report on Access of Aliens to Legal Transfer Programs
Colloquium on Transnational Legal Problems of Refugees
New Publication Available

President Expands Cuban-Haitian Entrant Program

The temporary respite heretofore given Cuban and Haitian aliens who this Spring sought refuge in Florida has now been extended to more recent arrivals as well.

Under the initial program, which reflected the administration's refusal to consider the Cubans and Haitians as being within the ambit of PL 96-212, the Refugee Act of 1980, a new status was created, "Cuban-Haitians (status

pending)."* Cubans who arrived in the U.S. between April 21 and June 19, 1980 and were in INS proceedings as of the latter date, as well as all Haitians who were in INS proceedings as of June 19, 1980, were to have their parole into the U.S. renewed for a period of 6 months, pending the introduction of special legislation.** The same treatment has now been authorized for those who arrived between June 20 and October 10, 1980. The following is quoted from a statement released on October 21, 1980 by the Cuban-Haitian Task Force:

> Christian R. Holmes, Director of the Cuban-Haitian Task Force, announced today that the President has decided that those Cuban and Haitian boat people who arrived in south Florida during the period June 20-October 10, 1980, and who are in Immigration and Naturalization Service (INS) proceedings as of October 10, 1980, will be paroled into the United States as "Cuban-Haitian Entrants (Status Pending)." Approximately 11,000 Cubans and 5,500 Haitians arrived in south Florida during this period. The decision was influenced by the recent enactment (on October 10) of the Refugee Education Assistance Act of 1980.
>
> Mr. Holmes stated that "the status of these people will be the same as those Cubans and Haitians covered by an Administration announcement of June 20, 1980, given by Ambassador Victor H. Palmieri, U.S. Coordinator for Refugee Affairs."

---

* Further details may be found in *Interpreter Releases*, Vol. 57, No. 25, June 30, 1980, pp. 305-306, 312-313; Vol. 57, No. 26, July 10, 1980, pp. 327, 333-336.

** The administration bill, S. 3013, has since been introduced on August 5, 1980. For its text and a discussion of its provisions, see *Interpreter Releases Bulletin* dated August 14, 1980, pp. 401a-401f.

Mr. Holmes noted that the Refugee Education Assistance Act of 1980 provides post-June 19 Cuban and Haitian arrivals with eligibility for certain education and welfare benefits, but does not grant them any special immigration status. In light of this, legislation providing such special immigration status, which is currently being sought by the Administration for the pre-June 19 group, would be broadened to include those Cubans and Haitians in INS proceedings on or before October 10.

In the meantime, the unanticipated arrival of so many additional aliens seeking a haven here has resulted in additional measures for relief funding.*

* * *

---

* See *Interpreter Releases*, Vol. 57, No. 37, September 19, 1980, p. 447; Vol. 57, No. 40, October 16, 1980, pp. 482, 483, 493.

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(2)

No. 84-1287

In The

Supreme Court of the United States

October Term, 1984

LOUIS LIPHETE, et al.,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Third District Court Of Appeal Of Florida

BRIEF OF RESPONDENTS MERRITT STIERHEIM, AS COUNTY MANAGER FOR DADE COUNTY, FLORIDA, AND FRANKLIN B. BYSTROM, AS PROPERTY APPRAISER FOR DADE COUNTY, FLORIDA IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

Whether this Court has certiorari jurisdiction under 28 U.S.C. § 1257(3) (1982) where:

A. The judgment below denying homestead tax exemption to Cuban/Haitian Entrants (status pending) is based on the separate, adequate and independent state ground of failure to meet the state constitutional and statutory requirement of intent to establish permanent residence in Florida; and

B. No federal question has been passed upon by the highest court of the state in which a decision could be had, and therefore no conflict on a question of federal law exists between the decision sought to be reviewed and decisions of this Court.

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A. A *Per Curiam* Affirmance Without Opinion Does Not Furnish A Basis For Conflict With A Decision Of Any Other Court. 6

B. The Decision Below Denying Homestead Exemption To Cuban/Haitian Entrants (Status Pending) Does Not Conflict With *Toll v. Moreno,* 458 U.S. 1 (1982) And *Elkins v. Moreno,* 435 U.S. 647 (1978), Since The District Court's Decision Is Based On A Determination Of Permanent Residence *Vel Non* And Not On Whether Applicants Are Aliens. 7

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STATEMENT OF THE CASE

Every person who has the legal or equitable title to real estate and maintains thereon as of January 1 the "*permanent* residence" of the owner, or another legally or naturally dependent upon the owner, qualifies under Florida law for homestead tax exemption.[1] This exempts from annual property tax $25,000 in assessed value of the homestead property.

Petitioners applied for homestead exemption of their residence for 1983. Their application was denied because of Petitioners' immigration status as Cuban/Haitian Entrants (status pending), aliens without permanent resident visas (PA-A27-28). This status precluded Petitioners from meeting the State constitutional and statutory requirement of declaring Florida their permanent residence. *Ibid.*

---

[1] Art. VII, § 6(a), Fla. Const. (1980), provides in pertinent part:

> Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

Sec. 196.031(1), Fla. Stat. (1983), provides in pertinent part:

> Every person who has the legal title or beneficial title in equity to real property in this state and who resides thereon and in good faith makes the same his permanent residence, or the permanent residence of another or others legally or naturally dependent upon said person, shall be entitled to an exemption from all taxation, except for assessments for special benefits, up to the assessed valuation of $5,000 on the said residence and contiguous real property, as defined in § 6, Art. VII of the State Constitution.

Denial of homestead exemption was appealed by Petitioners to an administrative tribunal, the County Property Appraisal Adjustment Board (PA-A28). Through counsel, Petitioners filed affidavits describing their immigration status as Cuban/Haitian Entrants and asserted: "I have permission to remain in the United States on an *indefinite* basis. A bill is presently pending in the Congress of the United States which would allow me to obtain Permanent Resident Status" (PA-A24, ¶ 10, A26, ¶ 10). Documentation submitted to this Court by Petitioners demonstrates that their "Country of Permanent Residence" is Haiti (PA-A31).

An unabashedly sympathetic Special Master of the Property Appraisal Adjustment Board was constrained by *Matter of Cooke,* 412 So.2d 340 (Fla. 1982) to deny the petition for homestead exemption, stating: "Regardless of the Special Master's views on this issue, the Master is bound by this recent ruling from the Florida Supreme Court" (PA-A22).

Petitioners filed suit in state court, seeking a declaration that the decision of the Florida Supreme Court in *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963) was unconstitutional and that Petitioners had been deprived of their right to homestead exemption from taxation in violation of the due process and equal protection clauses, the supremacy clause and the constitutional right to travel. Petitioners subsequently amended their complaint to delete the request that the trial court declare *Juarrero* unconstitutional.

The trial court dismissed Petitioners' amended complaint for failure to state a cause of action for homestead

exemption from ad valorem taxation. The trial judge concluded that Petitioners, as Cuban/Haitian Entrants (PA-A9, ¶ 4) lacking "permanent resident alien status" (PA-A15, ¶ 34) "are legally incapable of declaring a Florida home their permanent residence" *Liphete v. Stierheim* (PA-A6, ¶ 3).

Appeal of the trial court's dismissal of Petitioners' amended complaint was affirmed *per curiam* without opinion (PA-A4); *Liphete v. Stierheim,* 455 So.2d 1348 (Fla. 3d DCA 1984). The Florida Supreme Court dismissed Petitioners' appeal for lack of jurisdiction. The decision sought to be reviewed did not "*expressly* affect a class of constitutional or state officers", since it was a *per curiam* affirmance without opinion, and the Florida Supreme Court lacks jurisdiction to review such decisions. Art. V, § 3(b) (3), Fla.Const. (1980); Fla.R.App.P. 9.030(a) (2) (A) (iii).

The Petition to this Court for Writ of Certiorari to the Florida Third District Court of Appeal followed.

SUMMARY OF ARGUMENT

1. The State court decision sought to be reviewed is based on a separate, adequate and independent state ground. Therefore, the Petition for Writ of Certiorari should be denied.

2. The State court did not decide *any* federal question by its *per curiam* affirmance. *A fortiori,* the State court did not decide a federal question in a way in conflict with any decision of this Court. Therefore, the Petition for Writ of Certiorari should be denied.

REASONS FOR NOT GRANTING CERTIORARI

I.

No Federal Question Has Been Passed Upon In The Decision Denying State Homestead Tax Exemption To Cuban/Haitian Entrants (Status Pending).

II.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Does Not Decide A Federal Question In Conflict With Decisions Of This Court.

III.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Is Based On Separate, Adequate And Independent State Grounds.

———o———

I.

No Federal Question Has Been Passed Upon In The Decision Denying State Homestead Tax Exemption To Cuban/Haitian Entrants (Status Pending).

Petitioners seek to invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 (1982), which provides in pertinent part as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * *
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The recent pronouncement by this Court in *Illinois v. Gates,* — U.S. —, 103 S.Ct. 2317 (1983) reaffirmed that the Court has no jurisdiction under 28 U.S.C. § 1257(3) unless a federal question has been both raised and decided in the state court below, citing *Crowell v. Randell,* 10 Pet. 368, 391, 9 L.Ed. 458 (1836), *Owings v. Norwood's Lessee,* 5 Cranch. 344, 3 L.Ed. 120 (1809) and *McGoldrick v. Compagnie Generale Transatlantique,* 309 U.S. 430, 435-436 (1940).

The Third District Court of Appeal of Florida in the case *sub judice* issued a *per curiam* affirmance without opinion. The trial court had construed only the homestead provision of the Florida Constitution and applicable case law in deciding that Petitioners were "legally incapable of declaring a Florida home their permanent residence." *Liphete v. Stierheim* (PA-A5, 6). That "legal incapacity" precluded their stating a cause of action for homestead exemption and the amended complaint was dismissed. It is indisputable, therefore, that no federal question was decided or passed upon. Consequently, this Court lacks jurisdiction for review.

II.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Does Not Decide A Federal Question In Conflict With Decisions Of This Court.

A. A Per Curiam Affirmance Without Opinion Does Not Furnish A Basis For Discerning Conflict With A Decision Of Any Other Court.

The decision of the Florida Third District Court of Appeal sought to be reviewed, *Liphete v. Stierheim,* 455 So.2d 1348 (Fla. 3d DCA 1984), states in its entirety: *"Per curiam.* Affirmed. *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984)" (PA-A4). Petitioners sought to appeal the *per curiam* affirmance without opinion by invoking the jurisdiction of the Florida Supreme Court under a provision vesting jurisdiction to review district court of appeal decisions *expressly* affecting a class of constitutional officers (here, property appraisers).

The Supreme Court of Florida dismissed the appeal based on a line of cases which hold that the Florida Supreme Court pursuant to art. V, § 3(b), Fla. Const. and Fla.R.App.P. 9.030(a)(2)(A), does not have jurisdiction to entertain appeals where the district court of appeal has issued only a *per curiam* affirmance without a written opinion. *Robles Del Mar, Inc. v. Town of Indian River Shores,* 385 So.2d 1371 (Fla. 1980); *Dodi Publishing Co. v. Editorial America, S.A.,* 385 So.2d 1369 (Fla. 1980); *Jenkins v. State,* 385 So.2d 1356 (Fla. 1980). The rationale

of this line of cases is that a decision cannot *"expressly* and directly conflict with a decision of another district court of appeal or of the Supreme Court on the same question of law", Fla.R.App.P. 9.030(a)(2)(A)(iv), or *"expressly* affect a class of constitutional or state officers", Fla.R.App.P. 9.030(a)(2)(A)(iii), where the decision "expresses" nothing whatsoever except approval of the trial court's decision and omits explanation of the question or questions upon which the appellate court's decision is based.

Since the decision sought to be reviewed is a *per curiam* affirmance without opinion, no conflict can exist with any decision of any other district court of appeal or the Florida Supreme Court. Following the same rationale, no conflict can be inferred between the *per curiam* affirmance without opinion and any decision of this Court. In the absence of any explanation by the lower court specifying that its decision turns on the resolution of a federal question, Petitioners' assertion that the Florida court has decided a federal question which conflicts with decisions of this Court is groundless and the petition for certiorari to Florida's Third District Court of Appeal should be denied.

B. The Decision Below Denying Homestead Exemption To Cuban/Haitian Entrants (Status Pending) Does Not Conflict With Toll v. Moreno, 458 U.S. 1 (1982) And Elkins v. Moreno, 435 U.S. 647 (1978), Since The District Court's Decision Is Based On A Determination Of Permanent Residence Vel Non And Not On Whether Applicants Are Aliens.

Florida requires permanent residence as a prerequisite to homestead exemption from residential property

taxation. Art. VII, § 6, Fla.Const.; § 196.031(1), Fla.Stat. *See* footnote 1, *ante* at 1. This requirement imposes a burden of added taxes on all owners of residential property who are not permanent residents of the State of Florida.

Permanent residents include both citizens and noncitizens of the United States. *Smith v. Voight,* 158 Fla. 366, 28 So.2d 426 (1946). Permanent resident aliens may qualify for homestead exemption, since their immigration status gives them the legal capacity to establish permanent residence in Florida. *See Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963).

Aliens whose immigration status does not permit them to remain permanently in the United States, however, are precluded as a matter of law from establishing a permanent residence in Florida. Consequently, they cannot qualify for homestead exemption. *Ibid.; Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984).

An alien present in this country by virtue of no more than a tourist visa has no legal authority to reside permanently in Florida. Therefore, a tourist cannot qualify for Florida's homestead exemption. *Matter of Cooke,* 412 So.2d 340 (Fla. 1982).

To reside in this country permanently, an alien must have a permanent resident visa, must register as a resident alien and be in possession of an alien registration card at all times. 8 U.S.C. § 1304; 8 C.F.R. §211.1 (1982). It follows that an alien who does not hold a permanent resident visa cannot be a permanent resident of Florida, and regardless of what his intent is to do in the future, he is incapable of declaring a home in this State as his permanent residence unless his legal status is changed.

Since Petitioners are not registered as resident aliens and do not have permanent resident visas (PA-A13-14, ¶ 27), but are in this country merely as "parolees"[2] (PA-A9, ¶ 4) specifically designated Cuban/Haitian Entrants (status pending)[3] (*ibid.*, PA-A31, 32, A35-37, A39, A49,

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[2] The status of parolees is prescribed by § 182(d) (5) (A) of the Immigration and Naturalization Act, 8 U.S.C. § 1182(d) (5) (A) (1980), which provides:

> The Attorney General may, except as provided in subparagraph (B), in his discretion parole into the United States *temporarily* under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but *such parole of such alien shall not be regarded as an admission of the alien* and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States. (Emphasis supplied.)

[3] P.L. 96-422, § 501(e) defines "Cuban and Haitian entrant" as follows:

> (1) *any individual parole status as a Cuban/Haitian Entrant (Status Pending)* or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the status of the individual at the time assistance or services are provided; and
> (2) any other national of Cuba or Haiti—
>
> (A) who—
>
> (i) was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act;
>
> (ii) is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

(Continued on the next page)

A51-52), they do not have the legal ability to declare the property in question their permanent residence and therefore cannot avail themselves of homestead tax exemption benefits under art. VII, § 6, Fla. Const. (1980).

Not only aliens bear the burden of ineligibility for homestead exemption of owner-occupied residential property. Members of various classes of applicants are denied homestead tax exemption on the first $25,000 in assessed valuation of their Florida residences. Persons who are not permanent residents of the State do not qualify for this favorable tax treatment regardless of their citizenship or alienage. Denials are issued to permanent residents of other states, to aliens who lack permanent resident visas, and to all other applicants who cannot establish a permanent residence in Florida. Persons entitled to Florida homestead exemption include both alien and nonalien permanent residents of Florida. Thus, Florida has imposed an additional tax burden on all individuals sharing the common relevant characteristic of lack of permanent residence in the State. Only some of these persons are aliens. As a result, the facts *sub judice* are plainly distinguishable from those of *Elkins v. Moreno, supra,* and *Toll v. Moreno, supra,* where this Court emphasized:

> It is important to note that this case does not involve, and we express no views regarding, a State's imposition of a burden on all individuals sharing a

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(Continued from previous page)

(iii) has an application for asylum pending with the Immigration and Naturalization Service; and

(B) with respect to whom a final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered.

94 Stat. 1810 (Emphasis supplied).

> common relevant characteristic, *of whom only some are aliens.*

Toll, — U.S. —, 102 S.Ct., at 2986 n. 25 (Emphasis supplied).

Furthermore, the law of the case in *Elkins* and *Toll* is based on state law as construed by the Court of Appeals of Maryland. Before deciding whether the University of Maryland's denial of in-state tuition status to G-4 visaholders violated federal law, this Court certified to Maryland the question of whether state law prohibited G-4 visaholders from becoming domiciliaries of the State. Only after the Maryland court answered this state law question in the negative was it necessary for this Court to address a federal question.

The question concerning eligibility of non-resident aliens to homestead exemption was similarly certified by the Fifth Circuit Court of Appeals to the Florida Supreme Court. *See Matter of Cooke,* 643 F.2d 277 (5th Cir. 1981) (the certified question); 412 So.2d 340 (Fla. 1982) (Florida's answer); and 683 F.2d 130 (5th Cir. 1982) (adoption by the Fifth Circuit).

Unlike the University of Maryland, Respondents herein are following state law as construed by the highest court of the State. The issue of homestead tax exemption is a matter of Florida law: the State constitution and statutes require permanent residency for eligibility. Therefore, there is no conflict on a federal question between *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963) or *Cooke, supra,* and any decision of this Court.

It follows from the foregoing that the decision of the Florida Third District Court of Appeal does not conflict

with *Elkins v. Moreno* or *Toll v. Moreno*. The Petition for Writ of Certiorari should be denied.

C. The Decision Below Denying Homestead Exemption To Petitioners Does Not Conflict With Vlandis v. Kline, 412 U.S. 441 (1973), Because Cuban/Haitian Entrants (Status Pending) Lack The Legal Capacity To Declare Florida Their Permanent Residence.

Petitioners complain that Florida has established an irrebuttable presumption that only aliens with permanent resident visas can establish permanent residence in Florida and thereby qualify for the homestead tax exemption reserved exclusively for permanent residents of the State (Pet. 16-18). For the purpose of this brief, Respondents assume *arguendo* the correctness of Petitioners' assertion.

Petitioners' immigration status is that of parolees (PA-A9, ¶ 4). The legal status of parolees is prescribed by § 182(d) (5) (A) of the *Immigration and Naturalization Act*, 8 U.S.C. § 1182(d) (5) (A). *See* footnote 2, *ante*, at 9.

Hence, Petitioners' parolee status contemplates their constructive custody by the Immigration and Naturalization Service, and permits continuing physical presence in the United States only *"temporarily"* so long as they remain parolees. *Ibid.* The Cuban/Haitian Entrant (status pending) designation emphasizes the temporary nature of Petitioners' right to remain physically in this country pending their admission, exclusion or deportation, as their individual claims for asylum, refuge or admission may warrant.

In *Leng May Ma v. Barber*, 357 U.S. 185 (1958), this Court discussed the status of parolee under the precursor of present § 182(d)(5)(A) of the Immigration and Naturalization Act. Congress specifically provided, then as now, that parole "'shall not be regarded as an admission of the alien.'" 357 U.S., at 187.

Petitioners' parolee status affords them no greater foothold in the United States than that of parolee Leng May Ma. Parolees are constructively in custody during the pendency of their claims for admission to the United States. Parole is equated with detention. As Mr. Justice Holmes explained:

> The appellant could not lawfully have landed in the United States . . ., and until she legally landed "could not have dwelt within the United States." Zartarian v. Billings, 204 U.S. 170, 175. Moreover while she was at Ellis Island she was to be regarded as stopped at the boundary line and kept there unless and until her right to enter should be declared. United States v. Ju Toy, 198 U.S. 253, 263. When her prison bounds were enlarged by committing her to the custody of the Hebrew Society, the nature of her stay within the territory was not changed. She was still in theory of law at the boundary line and had gained no foothold in the United States.

Kaplan v. Tod, 267 U.S. 228, 230 (1925), as quoted in *Leng May Ma*, 357 U.S., at 189.

By definition, parolees are persons present in the United States *"temporarily"*, 8 U.S.C. § 1182(d)(5)(A), *supra*, who have not established a right to be lawfully admitted into the United States. *Ibid.* Because of their immigration status, parolees are authorized to remain in the United States temporarily only during the processing of

their claims for admission. Parolees thus plainly lack the legal capacity to formulate the intent to reside permanently in this country. Cuban/Haitian Entrants (status pending), who have been provided no more than "temporary respite" (PA-A48-50, A51-53) subject to renewal for six months at a time (PA-A42) and pending determination of their status, have no greater claim to permanent residence than other parolees.

Article VII, § 6, Fla. Const. and § 196.031(1), Fla. Stat., explicitly require the intent to establish permanent residence as a *sine que non* to the establishment of a claim of homestead exemption. Because parolees lack the legal ability to form the requisite intent to reside permanently in the State of Florida, Petitioners are precluded as a matter of law from claiming homestead benefits in Florida.

III.

The Decision Below Denying To Cuban/Haitian Entrants (Status Pending) Who Are Parolees Temporarily Present In The United States The Homestead Tax Exemption Reserved Exclusively For Homeowners Who Have Established Permanent Residence In Florida Is Based On Separate, Adequate And Independent State Grounds.

This Court has consistently held that when a state court judgment is based on adequate and independent state grounds, even though a federal question may be involved, it will decline to accept jurisdiction. *See Fox Film Corp. v. Muller,* 296 U.S. 207 (1935); *Enterprise Irrigation District v. Farmers Mutual Canal Company,* 243 U.S. 157, 164 (1917). In fact, the Court in *Zacchini v. Scripps-Howard Broadcasting Co.,* 433 U.S. 562, 566 (1977) stated:

> If the judgment below rested on an independent and adequate state ground, the writ of certiorari should be dismissed as improvidently granted, *Wilson v. Loew's Inc.*, 355 U.S. 597, 78 S.Ct. 562, 2 L.Ed.2d 519 (1958), for "[o]ur only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion." *Herb v. Pitcairn,* 324 U.S. 117, 125-126, 65 S.Ct. 459, 463, 89 L.Ed. 789 (1945).

In sustaining the decision of the trial court which denied the exemption to Petitioners, the district court of appeal cited *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d DCA 1984), a case involving the denial of homestead exemption to a Haitian alien without a permanent resident visa. *Alcime* includes a written opinion and cites two Florida Supreme Court cases as authority. The more recent case, *Matter of Cooke,* 412 So.2d 340 (Fla. 1982), cited with approval *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963). The prevailing interpretation of § 196.012(16), (17) Fla.Stat. (1981) is that "an alien without a permanent visa . . . cannot . . . prove an intention to become a permanent resident of the state for homestead tax exemption purposes." *Alcime,* 451 So.2d at 1037.

Cooke went to the Florida Supreme Court as a certified question from the United States Court of Appeals, Fifth Circuit. The court decided that the question involving the disallowance of homestead exemption claimed by a debtor-tourist in bankruptcy proceedings was primarily a state concern. The Fifth Circuit then relied upon

the Florida Supreme Court's answer and held that "a tourist cannot legally formulate the intent to make his residence his family's permanent place of residence." *Matter of Cooke,* 683 F.2d 130 (5th Cir. 1982).

Cooke is important for two reasons: It recognizes that Florida homestead law is primarily a matter of state concern and that the statute as interpreted by the State supremacy clause of the supreme court requires the *legal* ability to formulate the intent to reside permanently in the State, something a tourist cannot do. Likewise, a Cuban/Haitian Entrant (status pending), paroled into the United States temporarily, cannot formulate the requisite intent. The Fifth Circuit also recognized that no federal question was involved even though the state statute affects aliens.

Not every state statute which in any way deals with aliens is *per se* pre-empted by the federal power under the constitution. *De Canas v. Bica,* 424 U.S. 351 (1976). *See also Florida Lime and Avocado Growers, Inc. v. Paul,* 373 U.S. 132 (1963) "'[T]he court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by [the federal government's] constitutional power . . . .'" *Toll v. Moreno,* — U.S. —, 102 S.Ct., at 2991 (Rehnquist, J., dissenting).

It is well settled that state laws denying aliens certain rights enjoyed by citizens are not invalid under the due process clause of the Fourteenth Amendment to the Federal Constitution where the denial of such rights to the aliens is not arbitrary and capricious or wholly unjustifiable. *Examining Board of Engineers, Architects & Surveyors v. DeOtero,* 426 U.S. 572 (1976); *Frick v. Webb,* 263 U.S. 326 (1923); *Webb v. O'Brien,* 263 U.S. 313 (1923);

Porterfield v. Webb, 263 U.S. 225 (1923); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Crane v. New York*, 239 U.S. 195 (1915); *Heim v. McCall*, 239 U.S. 175 (1915); *Patsone v. Pennsylvania*, 232 U.S. 138 (1914).

This Court specifically held in *Osborne v. State of Florida*, 164 U.S. 650 (1897):

> The particular construction to be given to this state [tax] statute is a question for the state court to deal with, and in such a case as this we follow the construction given by the state court to the statutes of its own state.

Furthermore, if the Florida Supreme Court wanted to reconsider or recede from its earlier decision in *Juarrero*, it could have done so. Instead the court relied on *Juarrero* and quoted it with approbation in *Cooke*. Therefore, Petitioners' argument that the Florida Supreme Court has been denied the opportunity to reconsider its decision in *Juarrero* is without merit.

The determination of whether a taxpayer is within the ambit of a taxing statute is an independent and adequate state ground. As Mr. Justice Holmes explained in *Nickel v. Cole*, 256 U.S. 222 (1921):

> As there was state power to tax * * * the question whether or not the * * * interest [of the plaintiffs in error] under the circumstances was correctly subjected to the tax was purely a state question.

Id., at 226.

Petitioners' claim clearly is grounded in state law and the right they seek, homestead tax exemption, originates under state law.

All aliens without resident visas, as well as all other persons, alien and nonalien alike, who are not Florida

permanent residents, are denied homestead exemption in Florida. No particular group has been singled out for arbitrary, capricious or disparate treatment. Moreover, it is clearly within the purview of state courts to interpret and apply state statutes.

In *Elkins v. Moreno*, 435 U.S. 647, the Court held that while Congress "was willing to allow non-restricted non-immigrant aliens to adopt the United States as their domicile . . . [*w*]*hether such an adoption would confer domicile in a state would, of course, be a question to be decided by the State.*" *Id.*, at 666 (Emphasis supplied).

This Court specifically recognized that domicile was a potentially dispositive state question even where, unlike here, Congress had spoken and authorized permanent residence for certain aliens. It necessarily follows that the Florida prerequisite of permanent residency for homestead exemption is exclusively a matter of State law. Therefore this Court has no jurisdiction of Petitioners' claim.

———o———

CONCLUSION

For the reasons stated and upon the authorities cited, the petition for writ of certiorari should be denied.

Respectfully submitted,

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(3)

No. 84-1287

In The
Supreme Court of the United States
October Term, 1984

LOUIS LIPHETE, et al.,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

REPLY BRIEF OF PETITIONERS

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STATEMENT

Petitioners submit this Reply Brief pursuant to Rule 22.5 of the Supreme Court of the United States to address certain arguments raised by respondents in their Brief in Opposition to the Petition for a Writ of Certiorari.

ARGUMENT

Respondents have raised several new matters in their Brief in Opposition to the Petition for a Writ of Certiorari. They nonetheless fail to respond to important matters raised by petitioners, and instead attempt to obscure the issues presented in this case and the importance of this Court granting the writ of certiorari to review the judgment of Florida's courts.

Respondents have argued that no federal issue is involved, when the federal questions are absolutely paramount. Respondents maintain Florida's state courts acted on adequate and independent non-federal grounds when the only grounds which they can proffer are federal. In attempting to press the argument of adequate and independent state grounds, respondents claim for the state of Florida authority to classify and regulate alien immigrants in a manner contrary to federal policy. Moreover, respondents completely misconstrue federal immigration law, as it applies to petitioners.

Point I.

The Granting Of This Writ Is Of Vital Importance To Tens Of Thousands Of Aliens Lawfully Residing In South Florida.

Petitioners note that respondents do not dispute the importance of the case *sub judice*. To petitioners them-

selves, the Liphete family, their ability to own a home and properly care for it and their chance for equal treatment with other permanent residents of the state of Florida are of utmost importance. The rights of this one family, alone, however, are not solely at issue as this Court considers the appropriateness of granting this Writ of Certiorari. Petitioners' status as Cuban-Haitian Entrants is shared by approximately 130,000 aliens of Cuban and Haitian origin. The overwhelming majority of aliens in this category reside within the jurisdiction of Florida's Third District Court of Appeal.

The effect of the decision from which this writ is taken is to create a virtual subclass of tens of thousands of families expected to bear all of the burdens of permanent residence in the community but denied the benefits accruing to permanent residents.

The rule established in this and in previous Florida cases would also affect tens of thousands of other non-Cuban-Haitian Entrants whom the federal government has permitted to take up permanent residence but who are precluded from obtaining permanent residency in Florida by virtue of the decisions of Florida Courts.

Point II.

This Court Has Jurisdiction To Review This Case Under 28 USC Section 1257(3) (1982) Because Florida's State Courts Have Interpreted Federal Law Erroneously And Have Deprived Petitioners Of Important Federal Rights.

Petitioners have, from the initiation of this action, pressed their federal claims and demanded they be given equal protection and due process of law in having their application for homestead tax exemption treated like the

applications of other permanent residents of the state. See Petitioners' Appendix ("P.A.") at A8-A17. At each level of the appeal process, the constitutional and federal statutory issues were briefed and argued by petitioners and respondents. Under the facts of this case, the Florida courts necessarily had to decide that petitioners' federal rights were not infringed when, as Cuban-Haitian Entrants, they were denied the homestead tax exemption.

The Florida courts interpreted federal law in determining that petitioners' federal immigration status did not permit them to declare an intention to remain permanently in the United States. The Florida courts determined, contrary to *Elkins v. Moreno,* 435 U.S. 647 (1978), that unless an alien was a permanent resident within the meaning of the Immigration and Nationality Act he could not form the intent to remain in Florida. Only federal law can delimit the scope and status of an alien's right to remain permanently in the country. *Id.* Any claim by Florida's courts to make determinations concerning residency based upon federal immigration status, therefore, itself involves the state courts in the resolution of a crucial federal question.

It is a well settled principle of this Court that if petitioners raise federal questions and demonstrate that they did raise such questions,(1) it is not essential that the state's denial "shall have been put in direct terms". *New York, ex rel. Bryant v. Zimmerman,* 278 U.S. 63, 67 (1928). It is enough if "the necessary effect of the judgment has been to deny the claim." *Id.*

---

(1) Petitioners, of course did raise the federal question at every instance, beginning in the complaint which initiated the action in Florida's court. P.A. at A8, A13-A16.

It is therefore difficult to comprehend respondents' position that no federal issue has been pressed or passed on.[2]

A. The Brevity Of The Decision Of The Court Below Does Not Exempt The Judgment From Judicial Review.

Respondent's argument that this Court cannot review the decision below because of its brevity and because it is a *per curiam* decision is a novel one in federal appellate practice. Petitioners' rights have been effected by the judgments of Florida's courts. This Court reviews judgments of lower courts and not necessarily written opinions and reasoning. *Mississippi University for Women v. Hogan*, 458 U.S. 718, 723 n. 7 (1982).

The record clearly establishes that the basis for the judgments of the Florida trial and appellate courts in this case was an erroneous interpretation of federal law contrary to this Court's decisions. In its *per curiam* affirmance, the Florida Third District Court of Appeal found controlling its recent decision in *Alcime v. Bystrom*, 451 So.2d 1037 (Fla. 3d DCA 1984) which held that only aliens with permanent resident visas or "green cards" could, as a matter of law, form the intent to reside in this country permanently (P.A. at A4). *Alcime* itself relied on and found controlling two Florida Supreme Court

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(2) In *Illinois v. Gates*, — U.S. —, 103 S.Ct. 2317 (1983), upon which respondents rely, this Court was confronted with a situation in which a petitioner, the state of Illinois, was raising arguments not heard or decided at any level before the matter reached this Court. That is not the case here. The federal issues were raised, argued, and necessarily decided at every stage of this litigation.

cases, *Juarrero v. McNayr*, 157 So.2d 79 (Fla. 1963) and *In Matter of Cooke*, 412 So.2d 340 (Fla. 1982). Similarly the trial court in this case found the same Florida Supreme Court cases controlling (P.A. at A5-A6). Both *Juarrero* and *Cooke* interpreted federal immigration law in a manner arguably contrary to this Court's decisions.[3] The Florida courts therefore, not only passed upon Federal claims in their judgment, they decided them erroneously and contrary to federal law.

Federal rights can be denied as well by a state court refusing to decide a federal question as by the state court's erroneous decision. For this reason, a state court's re-

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(3) In *Juarrero* v. *McNayr*, 157 So.2d 79 (Fla. 1963), Florida's Supreme Court necessarily looked to the federal provisions governing the admittance of Cuban political refugees to determine whether the Juarrero family could, as a matter of law, form the requisite intent to permanently reside in the state. Since the family was admitted only so long as political conditions in their homeland were such that refuge was warranted, the court found that they were unable, as a matter of federal law, to form the requisite intent to remain permanently in the state of Florida.

Similarly *In Matter of Cooke*, 412 So. 2d 340 (Fla. 1982), the Florida Supreme Court examined two claims at the request of the federal Fifth Circuit Court of Appeals. The first question addressed was whether certain 1968 statutory amendments to the homestead tax exemption had ended the requirement that an applicant be a permanent resident. That issue the Florida court did decide in the negative on the basis of state law. The second question was whether Cooke, who had entered the U.S. as a Canadian tourist, had the right to claim the exemption under state law. Florida's highest court examined the provisions of the Federal statutes which defined the tourist visa. Indeed, the Supreme Court of Florida explicitly accepted the determination of a United States Court concerning Cooke's legal capacity under federal law as dispositive, then proceeded to reaffirm the decision in *Juarrero, supra*, that such a legal incapacity under federal law effectively barred an alien from claiming the exemption under state law.

fusal or failure to articulate denial of a federal claim is just as reviewable as an express decision. *Chambers v. Mississippi,* 410 U.S. 284, 290 n. 3 (1973); *Street v. New York,* 394 U.S. 576 (1969); *New York, ex rel. Bryant v. Zimmerman, supra.* The highest state court does not defeat review merely by writing brief opinions. Today's appellate courts are frequently confronting workloads that virtually mandate extremely brief opinions. This does not affect the jurisdiction of this Court to review such judgments. *Lawrence v. State Tax Commission,* 286 U.S. 276, 282 (1932); *Super Tire Engineering Co. v. McCorkle,* 550 F.2d 903 (3rd Cir., 1977), cert. denied 434 U.S. 827.

Respondents would have this Court adopt a rule which would allow no review of a *per curiam* decision. This is a rule of the Florida Supreme Court, but this Court regularly reviews *per curiam* affirmances and must do so to protect federal rights. Indeed, this Court implicitly rejected respondents' position in *Nash v. Florida Industrial Commission,* 389 U.S. 235 (1967). In *Nash,* petitioner had claimed that a decision of a Florida administrative board had violated his constitutional rights, federal statutory rights, and the supremacy clause of the United States Constitution. Nash lost before an administrative agency and petitioned an intermediate Florida Appellate court for review. The Florida appellate court denied certiorari *per curiam.* This precluded any review by Florida's Supreme Court. Nevertheless, this Court accepted certiorari because of the federal rights affected. *Id.,* at 237.

B. There Were No Independent Non-Federal Grounds Upon Which Petitioners Could Be Found To Lack The Legal Capacity To Form The Intent To Reside Permanently In Florida And Thus Be Ineligible For The Florida Homestead Tax Exemption.

Petitioners do not question Florida's authority to limit the homestead tax exemption to permanent residents of the state. Nor do petitioners challenge that part of the Florida Supreme Court decision in *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963), which determined that aliens with only temporary permission to remain in the country could not form the requisite intent to reside permanently in the state as a matter of law. Petitioners challenge only the refusal of Florida to extend the homestead exemption to Cuban-Haitian Entrants who have been permitted to remain in this country indefinitely and thus have the capacity to form such an intent.

Respondent's claim that there was an adequate independent state ground for that refusal is wholly without merit. Under any of the tests articulated by this Court there is no independent and adequate state ground claim. This Court recently established a clear rule for determining whether there was an adequate and independent state ground upon which a decision was based:

> . . . when, as in this case, a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, we will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.

Michigan v. Long, — U.S. —, 103 S.Ct. 3469, at 3476 (1983). See also *Enterprise Irrigation District v. Farmers Mutual Canal Company*, 243 U.S. 157 (1917) (If the asserted non-federal ground is inextricably interwoven with federal law then this Court has jurisdiction.); *NAACP v. Alabama*, 357 U.S. 449 (1958) (This Court's jurisdiction is not defeated by a claim of an adequate and independent non-federal ground where that claim is without fair or substantial support.); *Xerox Corporation v. Harris, County, Tex.*, — U.S. —, 103 S.Ct. 523 (1982) (Where a decision on a federal question is an underlying prerequisite to reaching a determination then jurisdiction is clear even if the state court cites no federal law, or constitutional provision).

In this case and the decisions upon which the Florida courts relied below, federal immigration law is necessarily interwoven with state law. This is necessarily so since,

> . . . it is the business of the political branches of the Federal Government, rather than the States or the Federal Judiciary, to regulate the conditions of entry and residence of aliens.

Mathews v. Diaz, 426 U.S. 67, at 84 and 85 (1976).

This rule certainly applies to restrictions on an alien's ability to permanently reside in this country. Respondents themselves concede as much by arguing only the federal ground in the substantive part of their brief when arguing against petitioners' legal capacity to form the intent to permanently reside in this country. See Respondent's Brief ("Res. Br.") at 8-9.

C. This Court's Decision In Elkins v. Moreno, 435 U.S. 647 (1978), Reinforces Petitioners' Position That The Key Issue Is Federal.

Elkins, supra, contrary to Respondents' contention in no way conflicts with this jurisdictional rule. The very fact that this Court undertook and did decide whether the Morenos had the legal capacity to declare themselves permanent residents of the state of Maryland settles the issue of whether this question is a federal one. This Court's remand in *Elkins* to Maryland's Court of Appeals on the question of whether there was any other element of domiciliary in the laws of Maryland which the Morenos had not fulfilled, came after this Court's determination of the effect of the Morenos' federal immigration status. The remand to the Maryland courts was simply to decide, in light of the federal determination of status, whether Maryland's other criteria for domicile might prevent the Morenos from achieving "in state status". *Toll v. Moreno,* 397 A 2d 1009 (Md. 1979). In any case an assertion by any state that it had the authority to impose greater restrictions on aliens than the federal government had imposed would run afoul of the supremacy clause. *Toll v. Moreno,* 458 U.S. 1 (1982).

Point III.

The Decision Below Denying Homestead Exemption To Cuban-Haitian Entrants Does Conflict With Toll v. Moreno, 458 U.S. 1 (1982), Elkins v. Moreno, 435 U.S. 647 (1978), And Vlandis v. Kline, 412 U.S. 441 (1973), As That Case Has Been Modified By Subsequent Decisions.

The question in *Elkins,* was whether aliens with a "G-4" visa could be domiciles of Maryland. This Court decided that, as a matter of federal law, "G-4" aliens did have the legal capacity to form a good faith intent to re-

side permanently in the United States and Maryland and that all aliens lawfully in this country have this legal capacity unless it is withheld from them by some restriction placed on their entry.

Respondents, directly opposite to the conclusion of this Court in *Elkins,* still contend that only holders of permanent resident visas or "green cards" can reside permanently in this country as a matter of federal law. (Res. Br. at 8). However, petitioners here, like the Moreno family in *Elkins* assert that their federal status as Cuban-Haitian Entrants, although not a grant of permanent resident status, does not preclude them for consideration as permanent residents of Florida.[4]

The judgment of the Florida courts also conflicts with *Toll v. Moreno,* 458 U.S. 1 (1982) where this Court decided that it was impermissible for a state to place a greater burden on the alien's status than the one placed there by

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(4) This Court in *Elkins, supra,* made it clear that there were different categories of aliens without "green cards" who could lawfully intend to reside in the United States indefinitely. Maryland erred by treating aliens without the permanent visa as being legally incapable of forming the intent to permanently reside.

Just as Maryland officials failed to distinguish between different categories of aliens with temporary visas, Florida has failed to examine the unique status of Cuban-Haitian Entrant. Respondents attempt to describe petitioners as merely parolees (Res.Br., 9). The ordinary parolee is admitted to the United States only pending a hearing to determine the legal right to remain in the country.

Petitioners, as Cuban-Haitian Entrants, are not ordinary parolees. Their right to remain indefinitely was decided and decreed by presidential directive. Florida has no legitimate reason for treating these permanent residents any differently from other permanent residents.

federal law. Respondents are making just such an impermissible assertion of state authority by defining, differently from federal law, the legal capacity of Cuban-Haitian Entrants to permanently reside in Florida. (5)

The decision also conflicts with *Vlandis v. Kline*, 412 U.S. 441 (1973), as modified by *Weinberger v. Salfi*, 422 U.S. 749 (1975), which established that it is a violation of due process for a state to deny a person the opportunity to show facts that would demonstrate they meet the test of permanent residence. Petitioners' application for Florida's homestead tax exemption was denied solely on the basis of their lack of a permanent resident "green card" (P.A. at A20). Petitioners were not allowed to rebut the presumption that without a "green card" they could not form a good faith intent to reside in the state on a permanent basis. Petitioners, however, qualified as permanent residents under each of the criteria applied to all other Florida homeowners under Sections 196.012 and 196.015, Florida Statutes (1983) which define permanent resident for purposes of the homestead exemption. See Petition for Writ of Certiorari at 4-5 (6)

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(5) Respondents' attempt to distinguish *Elkins* and *Toll* (Res. Br. at 10-11) is devoid of substance since the rule of Maryland's university barred all non-domiciles, alien and non-alien, but only aliens without "green cards" were found barred because they allegedly could not form the intent to become permanent residents. Petitioners face the same rule.

(6) Respondents do not deny that Florida has established an irrebuttable presumption that only aliens with "green cards" can establish permanent residence in Florida (Res. Br. at 12) and instead argue again their mistaken view of federal immigration law in an attempt to validate the presumption.

Petitioners have thereby been denied due process of law.

Point IV.

Respondents Misperceive The Standard Of Review Applicable To Classification Based On Alienage.

Respondents are completely mistaken in their view of the permissibility of state laws that discriminate on the basis of alienage. This court in its most recent examination of this question stated the following:

> As a general matter, a State law that discriminates on the basis of alienage can be sustained only if it can withstand strict judicial scrutiny. In order to withstand strict scrutiny, the law must advance a compelling State interest by the least restrictive means available.

Bernal v. Fainter, — U.S. —, 104 S.Ct. 2312, at 2316 (1984).

Even in those limited areas where this Court has drawn a narrow exception, particularly employment in political positions intimately related to the process of democratic self government, aliens are at a minimum a semi-suspect class. State laws that fall within the narrow limits of this exception are subjected at a minimum to intermediate scrutiny. *Cabell v. Chavez,* 454 U.S. 432 (1982); *Ambach v. Norwick,* 441 U.S. 68 (1979); *Foley v. Connelie,* 435 U.S. 291 (1978). See also *Examining Board v. De Otero,* 426 U.S. 572 (1976); *Sugarman v. Dougall,* 413 U.S. 634 (1973); *In Re Griffiths,* 413 U.S. 717 (1973); *San Antonio School District v. Rodriguez,* 411 U.S. 1 (1973); *Graham v. Richardson,* 403 U.S. 365 (1971); *Takahashi v. Fish and Game Commission,* 334 U.S. 410 (1948); *Hines v. Davidowitz,* 312 U.S. 52 (1941); *Truax v. Raich,* 239 U.S. 33 (1915).

This Court has held that aliens, whatever their immigration status, even those here unlawfully, are 'persons' and as such entitled to due process and equal protection of the law as guaranteed by the Fifth and Fourteenth amendments to the constitution *Plyler v. Doe,* 457 U.S. 202 (1982).

Respondents seem to arrogate to the state of Florida power to make distinctions among aliens, which is vested exclusively in the federal government. *Mathews v. Diaz, supra.*

CONCLUSION

For all the foregoing Reasons and the reasons set forth in the Petition for Writ of Certiorari, this Court should grant the writ of certiorari and review the judgment of the Florida Court.

Respectfully submitted

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QUESTIONS PRESENTED FOR REVIEW

Whether this Court has certiorari jurisdiction under 28 U.S.C. §1257(3) (1982) where:

A. The judgment below denying homestead tax exemption to Cuban/ Haitian Entrants (status pending) is based on the separate, adequate and independent state ground of failure to meet the state constitutional and statutory requirement of intent to establish permanent residence in Florida; and

B. No conflict on a question of federal law exists between the decision sought to be reviewed and decisions of this Court.

STATEMENT OF THE CASE

Respondent Randy Miller, Executive Director of the Department of Revenue, State of Florida, adopts and incorporates by reference the Statement of the Case outlined in the Brief of Respondents Merritt Stierheim, County Manager for Dade County, Florida, and Franklin B. Bystrom, Property Appraiser for Dade County, Florida. Respondent Miller notes, however, that many facts presented by Petitioners are not part of the record below. Indeed, since the decision of the trial court was to grant defendants' motion to dismiss, no evidentiary hearing ever took place.

SUMMARY OF ARGUMENT

1. Petitioners fail to establish that the state court decided a federal question in a way in conflict with an applicable decision of this Court.

Therefore, the Petition for Writ of Certiorari should be denied. 28 U.S.C. §1257(3); Supreme Court Rule 17.1(c).

2. The state appellate court decision indicates clearly and expressly that it is based on a bona fide separate, adequate and independent state ground. Accordingly, the Petition for Writ of Certiorari should be denied.

ARGUMENT

Respondent Miller concurs with the Brief in Opposition filed by Respondents Stierheim and Bystrom and the following is submitted to supplement that Brief.

I.

Petitioners seek to invoke the discretionary jurisdiction of this Court pursuant to 28 U.S.C. §1257(3), by contending that the Third District Court

of Appeal decided federal questions in a way which "directly conflicts with this Court's holdings in Elkins v. Moreno, 435 U.S. 647 (1978), Vlandis v. Kline, 412 U.S. 441 (1973), Toll v. Moreno, 458 U.S. 1 (1982)." (Petition for Writ of Certiorari at 10). The conflicts presented by Petitioners are contrived. The state court has not decided a federal question in a way in direct conflict with any applicable decisions of this Court.

The opinion of the appellate court below does not conflict with the case of Toll v. Moreno, 458 U.S. 1 (1982). In Toll, this Court held that the University of Maryland's policy regarding instate tuition, as applied to G-4 aliens and their dependents, violates the supremacy clause of the United

States Constitution. There are many factors involved in the reasoning in Toll that make it distinguishable from the instant case. This Court in Toll cited several cases at length which "have long recognized the preeminent role of the Federal Government with respect to the regulation of aliens within our borders." 458 U.S. at 10. The cases discussed, however, had to do with classifications directly based upon alienage. Specifically, the Toll court referred to Takahashi v. Fish & Game Commission, 334 US 410, 418-420, (1948). In Takahaski, a California statute that precluded aliens who were "ineligible for citizenship under federal law" from obtaining commercial fishing licenses. In Graham v. Richardson, 403 U.S. 365

(1971) this Court held that a state may not withhold welfare benefits from resident aliens merely because of their alienage. Further, this Court noted that the specific aliens concerned in the Toll case, G-4 aliens,[1] are relieved of federal, and in many instances, state and local taxes, on the salaries paid by certain international organizations. The special privileges granted to G-4 aliens indicate that the legal status of G-4 aliens is distinguishable from the Petitioners herein.

The Florida Statute specifying eligibility requirements for receiving

[1] G-4 visas are issued to non-immigrant aliens for officers or employees of certain international organizations and to members of their immediate families.

$25,000 exemption from ad valorem taxes on homesteads (§§196.031 and 196.012, Florida Statutes) are not based upon alienage. Homestead exemption is denied to anyone who is not a permanent resident of Florida. Aliens are not singled out or referred to in any way in the Florida Constitution or Florida Statute. This is consistent with the holding in Toll v. Moreno in which this Court stated:

> It is important to note that this case does not involve, and we express no views regarding, a State's imposition of a burden on all individuals sharing a common relevant characteristic, of whom only some are aliens.

Toll, 458 U.S. at 17 n. 25.

Nor does the opinion of the state appellate court below conflict with the case of Elkins v. Moreno, 435 U.S. 647

(1978) for the reasons set forth in the brief submitted by Respondents Stierheim and Bystrom (pages 7-12). Elkins also concerned the denial of instate status to G-4 aliens in order to receive instate tuition rates. Thus, even though federal statutes were involved, this Court turned to the state for the resolution of the question of whether or not G-4 aliens could become domiciliaries of Maryland:

> Accordingly, the question whether G-4 aliens have the capacity to acquire Maryland domicile is potentially dispositive of this case. Since the resolution of this question turns on federal statutory law and Maryland common law as to each of which there are no controlling precedents, we set out the correct meaning of federal law in this area and then sua sponte certify this case to the Court of Appeals of Maryland in order to clarify

> state-law aspects of the domicile question.

Elkins, 435 U.S. at 662.

The opinion of the state appellate court below does not conflict with the case of Vlandis v. Kline, 412 U.S. 441 (1973) as modified by Weinberger v. Salfi, 422 U.S. 749 (1975). In Vlandis, this Court held unconstitutional a Connecticut statute which, for the purposes of receiving in-state tuition rates, classified as non-residents an unmarried student whose legal address was outside of Connecticut for any part of the one-year period immediately preceding his application for admission, and a married student whose legal address was outside of Connecticut at the time of his application for admission. This Court held that Connecticut was forbidden by the

Due Process Clause to deny an individual the resident rates on the basis of:

> A permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true in fact, and when the State has reasonable alternative means of making the crucial determination. (e.s.)

Vlandis v. Kline, 412 U.S. at 452.

The opinion in Vlandis was modified by Weinberger v. Salfi, 422 U.S. 749, which concerned an attack on a nine month duration-of-relationship requirement of the Social Security Administration to receive benefits. The suit was brought by a widow who had been married to her deceased husband less than 6 months at the time of his death. This Court found Vlandis and other cases[2] to be not controlling adopting

[2]Stanley v. Illinois, 405 U.S. 645, which held invalid a state's denial of a hearing on parental fitness to an unwed father when such a hearing was granted to all other parents whose custody of

(CONTINUED ON NEXT PAGE)

instead more of an equal protection analysis regarding classifications in the area of social welfare. After discussing the relationship between equal protection analysis and due process analysis, the Salfi Court applied a rational relationship test to determine the validity of the conclusive legislative presumption and found that Constitutional standards were met.

In Salfi, this Court quoted from several cases distinguishing between standards used to analyze classifications made in the area of economics and social welfare as opposed to those involving "the most basic economic needs of impoverished

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[2]CONTINUED
their children was challenged, and Cleveland Board of Education v. La Fleur, 414 U.S. 632, which held invalid school board regulations requiring school teachers to take unpaid maternity leave commencing four to five months before the expected birth.

human beings." Salfi, 422 U.S. at 769.

Quoting from Dandridge v. Williams, 397 U.S. 471. (1970) this Court said:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co. 220 US 61, 78, 55 L.Ed. 369, 31 S.Ct. 337. 'The problems of government are practical ones and may justify, if they do not require, rough accomodations-illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 US 61, 69-70, 57 L.Ed. 730, 22 S.Ct. 441. . . .

Weinberger v. Salfi, 422 U.S. at 769.

Although the case sub judice does not deal with the areas of economics or social welfare, the rationale is important because this Court has reached similar conclusions in analyzing state taxing statutes:

> In taxation, even more than in other fields, legislatures possess the greatest freedom in classification.

Madden v. Kentucky, 309 U.S. 83, 88, (1940). In Allied Stores of Ohio v. Bowers, 358 U.S. 522 (1959), this Court upheld an Ohio tax scheme which assessed taxes for ad valorem tax purposes on merchandise held in warehouses for storage only by residents while exempting the same merchandise of nonresidents. In reviewing the tax scheme there, this Court said:

> The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests. Of course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. (emphasis added)

358 U.S. at 526.

Similarly, Florida's denial of $25,000 exemption from ad valorem taxation of homesteads to all who are not permanent residents of the State easily meets these constitutional standards.

Florida's denial of homestead exemption to Cuban/Haitian Entrants

(status pending) does not conflict with Vlandis as modified by Salfi for several reasons:

Florida requires a person to be a permanent resident in order to qualify for homestead exemption. It does not distinguish between old and new residents. Rather, it requires them to be legally permanent residents of the state. Further, Florida's presumption is not permanent since federal law may eventually confer permanent resident status to Cuban/Haitian Entrants (status pending). No evidence has been presented here by Petitioners to show that legally, Cuban/Haitian Entrants (status pending) have been granted permanent resident status by federal or state law. A fortiori, it is universally true that Cuban/Haitian Entrants (status pending) have not been granted permanent resident status. Under Salfi, the proper stan-

dard of review is the rational basis test since Florida's requirement for permanent residence does not discriminate on the basis of alienage but is imposed on all non-permanent residents; and an exemption from taxation does not involve a basic necessity of life or basic economic need. Under Florida case law, an exemption from taxation is a special favor or privilege granted by the Legislature which is to be strictly construed against the taxpayer. State v. Thompson, 101 So.2d 381 (Fla. 1958); State ex rel. Szabo Food Service, Inc. v. Dickinson, 286 So.2d 529 (Fla. 1973). As noted above, this Court gives wide latitude and defers to states in tax matters.

No conflict exists between the state court's opinion below and the decisions of this Court.

II

This Court should deny the Petition for Writ of Certiorari because the state court decision indicates clearly and expressly that it is based on a bona fide separate, adequate and independent state ground. Michigan v. David Kerk Long, 463 U.S. 1032 (1983).

The opinion of the Florida appellate court sought to be reviewed, Liphete v. Stierheim, 455 So.2d 1348 (Fla. 3d DCA 1984), states in its entirety: "Per curiam. Affirmed. Alcime v. Bystrom, 451 So.2d 1037 (Fla. 3d DCA 1984)." An examination of Alcime and cases upon which it relies is necessary to show that the decision below is based on a bona fide separate, adequate and independent state ground.

The Florida appellate court in Alcime held that the appellant, an alien

without a permanent visa, could not, under the prevailing interpretation of the applicable Florida Statute, prove an intention to become a permanent resident for homestead tax exemption purposes. The Florida Statute referred to in Alcime is §196.012(16), (17), F.S., 1981.[3] which defines "permanent resident" and "permanent residence." For the prevailing interpretation referred to in Alcime, the appellate court cited as authority Juarrero v. McNayr, 157 So.2d 79 (Fla. 1963); cf. Matter of Cooke, 412 So.2d 340 (Fla. 1982).

Petitioners argue that both Juarrero and Cooke interpreted federal immigration law in a manner "arguably

[3]Brief of Petitioners page 4 contains the 1983 version of this statute which is unchanged from the 1981 version cited by the appellate court.

contrary" to this Court's decisions. An examination of these cases reveals the contrary.

In Juarrero the Florida Supreme Court interpreted the State constitutional provision providing for homestead exemption from ad valorem taxation and the Florida Statutes which defined "resident". The Florida Supreme Court held that appellants, Cuban political refugees holding temporary visas, cannot legally intend to "do that which by law and the temporary nature of their visas they are prohibited from doing." Juarrero, 157 So.2d at 81. The only reference to federal concepts in the opinion are 1) a reference to the nature of the visas being temporary rather than permanent and 2) rejecting appellants' argument that the 14th Amendment to the Constitution of the United States had been violated:

> We have not overlooked appellants' contention that the denial of homestead exemption to these alien refugees would deprive them of their property rights under the Constitution of the State of Florida and of their rights under the Equal Protection clause of the 14th Amendment to the Constitution of the United States. One cannot complain that he has been denied due process or equal protection if every other person within a reasonable classification to which he belongs is treated in the same manner.

Juarrero, 157 So.2d at 81.

Finally, Matter of Cooke, 412 So.2d 340 (1982) was heard by the Florida Supreme Court on the certified question of law from the United States Court of Appeals, Fifth Circuit of whether Florida allows foreigners visiting the United States to place a residence owned in the state beyond the reach of creditors under the Florida homestead

exemption.[4] The Fifth Circuit decided that the question involving the disallowance of homestead exemption claimed by a debtor-tourist in bankruptcy proceedings was one of Florida law appropriate "for resolution by the highest court of Florida." Cooke, 643 F.2d at 277.

The only reference to federal law in the state court Cooke opinion was the Court's quotation from the federal bankruptcy judge who explained Cooke's status under federal law. Agreeing with the analysis of the federal bankruptcy judge, the Florida Supreme Court in Cooke adopted the rationale of Juarrero

[4]This homestead exemption is not the exemption sought by Petitioners, sub judice, but rather the exemption from forced sale of a homestead owned by the head of a family, Article X, Section 4, Constitution of Florida (1968).

and held that Cooke could not legally formulate the requisite intent to make Florida his permanent home. The Fifth Circuit, recognizing the question to be primarily one of state concern, relied on the Florida Supreme Court's answer and held that "a tourist cannot legally formulate the intent to make his residence his family's permanent place of residence." Matter of Cooke, 683 F.2d 130 at 131 (1982).

Thus, it is evident that the Florida appellate court below in issuing a per curiam affirmance without opinion citing its earlier opinion in Alcime v. Bystrom (which in turn cited two Florida Supreme Court cases) relied on interpretation of the State Constitution and statutes, not federal law as argued by Petitioners.

Beyond the Florida court decisions, an examination of the authorities relied

upon by Petitioners must be examined. Petitioners argue that the denial of homestead exemption from ad valorem taxation on the basis of Petitioners' lacking the legal capacity to form the requisite intent to reside permanently is a violation of federal law. Specifically, Petitioners state (Petition for Writ of Certiorari at 15):

> [The Cuban/Haitiant entrant program] was created by Presidential directive in response to a critical political situation. While no act or regulation defines it, the Executive policies expressed and the status created have the full force and effect of law. U.S. v. New Orleans Public Service, Inc., 553 F.2d 459 (5th Cir., 1977).

This argument is without merit.

The holding in U.S. v. New Orleans, affords Petitioners little help. The

"Executive policies" and documents supplied in Petitioners' Appendix do not fall within the parameters of U.S. v. New Orleans:

> As we indicated earlier in this opinion, the Executive Order and its implementing regulations have the force and effect of law, were implemented pursuant to statutory procurement authority and have been approved by Congress since being issued. (emphasis added)

553 F.2d at 471.

Petitioners refer to a "Presidential Order" but do not supply a citation to an Executive Order.[5] An examination of the documents attached to Petitioners' Appendix and their reference thereto reveals that there is

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[5]Petitioners, Appellants below, did refer to Executive Order 12208 on pages 8 and 9 their reply brief submitted in the state appellate court. However, (CONTINUED ON NEXT PAGE)

no federal authority granting Cuban/Haitian entrants the status of permanent residence.

Petitioners refer to a statement by Victor H. Palmieri, U.S. Coordinator for Refugee Affairs, at a State Department Press Briefing on June 20, 1980 (PA-A40). Mr. Palmieri's statement specifically states that the President has decided to seek special legislation regularizing the status of Cuban/Haitian entrants which will allow them to remain in the U.S. and make them eligible for certain benefits. The statement continues to refer to Cuban/Haitian

[5]CONT. a review of Executive Order 12208 and the federal statutes cited therein reveals that said Order does not grant permanent residency to Cuban/Haitian Entrants. On the contrary, it refers to the authority delegated to the Attorney General, the Secretary of State, and the U.S. Coordinator for Refugee Affairs regarding emergency conditions for admission to the United States, reports to Congress, and other items.

entrants who will have their parole reviewed for a six month period as "Cuban/Haitian entrants (status pending)". This statement continues that special legislation will be submitted to Congress to provide for, among other things, conversion to permanent resident alien status after two years. Petitioners cite to no congressional legislation enacted subsequent to Mr. Palmieri's statement which has granted the status of permanent resident to Cuban/Haitian entrants.

Next, Petitioners attach two documents relating to the Social Security Administration: a Program Instruction Action Transmittal (PA-A35) and a Telegraphic Message (PA-A38). These documents refer to eligibility of

Cuban/Haitian entrants (status pending) for certain benefits of the Social Security Act including, among others, aid to families with dependent children, and aid to the blind. Petitioners argue that the language in this telegraphic message (PA-A39) which states that "the stamped I-94 constitutes evidence of permanent residence in the U.S. under color of law" is evidence that the aliens have permanent status. However, the reading of the remainder of the paragraph reveals that the reference to permanent residence relates solely to eligibility for certain types of federal aid. The I-94 card is a record of arrival and departure issued when entering the United States. It contains an expiration date and is surrendered upon departure. However, the reference to the required stamp on the I-94 card reads as follows:

"Cubans/Haitians Entrant (Status Pending) reviewable January 15, 1981. Employment authorized until January 15, 1981."

Thus, the stamp referred to in the documents submitted by Petitioners expressly states that th status is still pending and will be reviewed upon a date certain. The I-94 card itself and the stamp referred to above do not grant "permanent residence". Cuban/Haitian Entrants (Status Pending) are not legally permanent residents under the immigration law but are simply allowed to reside in the United States on an indefinite basis until their permanent status is decided. If these persons are not permanent residents under federal standards, it follows that Florida's denial of homestead exemption because Petitioners are not permanent residents is proper.

Accordingly, the denial of home-

stead exemption from ad valorem taxation by the Dade County Property Appraiser does not infringe upon any federal law nor reject any federally established status. Rather the decision and the state case law it relies upon are based solely and totally upon state law and an analysis of Florida's Constitution.

The Petition for Writ of Certiorari should be denied because the state court decision is based upon a bona fide separate, adequate and independent state ground. It does not rest primarily on federal law, nor is it interwoven with federal law. The adequacy and independence of the state law ground is clear from the face of the opinion. Michigan v. David Kerk Long, 463 U.S. 1032 (1983).

Finally Petitioners' claim that the granting of this writ is of vital importance to tens of thousands of

aliens residing in South Florida is unfounded. On the contrary, the issue in this case would impact only those Cuban/Haitian entrants who own homes, who have properly applied for and have been denied homestead exemption because they are not permanent residents but who otherwise would qualify for the exemption. To date, this Respondent is aware of only two such cases, the Petitioners and the Alcimes.

CONCLUSION

For the reasons stated above the petition for writ of certiorari should be denied.

Respectfully submitted,

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No. 84-1287

In The
Supreme Court of the United States
October Term, 1984

LOUIS LIPHETE, et al.,

Petitioners,

vs.

MERRITT STIERHEIM, et al.,

Respondents.

On Petition For Writ of Certiorari to the Third District Court of Appeal of Florida

REPLY BRIEF OF PETITIONERS TO THE OPPOSITION BRIEF OF RESPONDENT RANDY MILLER

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Rule 22.5 of the Rules of the Supreme Court of the United States 1

STATEMENT

Petitioners submit this Reply Brief pursuant to Rule 22.5 of the Supreme Court of the United States to address certain arguments raised by Respondent Randy Miller, As Executive Director of the Department of Revenue, State of Florida, in his Brief in Opposition to the Petition for Writ of Certiorari.

ARGUMENT

The respondent Randy Miller[1] raises several arguments in his brief in opposition to certiorari. Each is wholly without merit. Mr. Miller has misunderstood petitioners' arguments, failed to distinguish controlling precedent, and ignored the importance of this Court's recognition of the complexities and distinctions that Congress and the Executive have made among various categories of aliens who are not permanent residents of the United States.

I. Petitioners Do Not Challenge The State Of Florida's Right To Set Criteria For Residency, But Rather Its Improper Use Of Federal Criteria Contrary To Federal Authority.

Despite respondent's argument to the contrary, petitioners do not challenge the State of Florida's denial of homestead tax exemption to persons who can not meet the requirements of residency under state law. Rather,

1. Respondent Randy Miller's Brief in Opposition will be cited herein as "Miller Br."

petitioners challenge Florida's impermissible and incorrect use of federal criteria to establish state residency in derogation of federal purpose. The petitioners in this case meet all of the State's criteria for residency. They lack only status as permanent residents under federal law. It is the judicial gloss on state statutes[2] requiring that an alien must be a permanent immigrant under federal law before he can get a homestead tax exemption in Florida that is challenged by petitioners. The refusal to grant homestead exemption solely because petitioners lack permanent immigrant status under federal law is in derogation of federal authority which has specifically granted the petitioners the right to remain indefinitely in the United States. Petitioners Appendix A31-A53.

II. The Respondent Can Not Distinguish Toll v. Moreno, 458 U.S. 1 (1982), From This Case.

The respondent also argues that *Toll v. Moreno,* 458 U.S. 1 (1982) is distinguishable from the present case because "(t)he special privileges granted to G-4 aliens is distinguishable from the Petitioners herein." Miller Br. at 6. This analysis misses the mark. Although *Toll* undoubtedly involved G-4 non-immigrants, the underlying legal issue before this Court was whether Congress has precluded the covered alien from establishing residency in the United States. 458 U.S. at 574. This Court's analysis demonstrated that even though an alien may have a non-immigrant status such as a G-4, it did not preclude him

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2. The Respondent readily concedes that neither the State's Constitution, nor state statutes refer to federal immigration alienage status when determining homestead status. Miller Br. at 7. Respondent, however ignores the fact that Florida's judicial decisions require it.

from establishing residency in the United States. The petitioners before this Court have expressly been informed that they can remain indefinitely in the United States.[3] Unlike even G-4 aliens who are, by definition, non-immigrants, Cuban-Haitian Entrants, by definition, are a limited class of aliens who have expressly been given permission to remain in the United States. The question is not then the distinction between G-4 aliens and Cuban-Haitian Entrants as the respondent suggests, but rather whether Cuban-Haitian Entrant status "precludes" Entrants, such as petitioners, from establishing residency. Although the Florida courts have asserted that any status short of permanent immigrant status precludes an alien from residence in the State, there is nothing in federal law that precludes the Haitian petitioners from becoming permanent residents of the state.

III. Respondent Fails To Distinguish Elkins v. Moreno, 435 U.S. 647 (1978), And Can Not Demonstrate Why It Does Not Control This Case.

The respondent's efforts to distinguish *Elkins v. Moreno,* 435 U.S. 647 (1978) is equally unpersuasive. *Elkins* rested on the recognition that "Congress did ***not*** restrict every non-immigrant class" *Id.* at 666 in a manner which would preclude an intent to remain in the United States. Although this Court decided the issue in the context of G-4 aliens, the same may be said of aliens with E, I and A non-immigrant visas and Cuban-Haitian Entrant status. *Elkins* teaches us that when Congress has

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3. Statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs A40-A47.

not placed such a restriction on an alien, the States may not do so.

IV. This Case Falls Squarely Within Vlandis v. Kline, 412 U.S. 441 (1973) As Modified By Weinberger v. Salfi, 422 U.S. 749 (1975).

Despite respondent's confusing argument to the contrary, this case falls squarely within *Vlandis v. Kline,* 412 U.S. 441 (1973) as modified by *Weinberger v. Salfi,* 422 U.S. 749 (1975). The respondent asserts that Florida's requirement has a rational basis because it "does not discriminate on the basis of alienage but is imposed on all non-permanent residents." Miller Br. at 16. This non-sequitur demonstrates how little force the respondent can muster in support of its position. The State of Florida's refusal to grant homestead tax exemption solely on the basis of an alien's lack of federal permanent immigrant status *does* discriminate on the basis of alienage. It establishes two classes of persons: United States citizens and permanent immigrants who meet the other requirements for state residence, and aliens who are not permanent immigrants under federal law and who, despite meeting all the requirements for state residence, are denied state benefits because they do not possess federal permanent immigrant status. This conclusive presumption against residency is exactly the type of presumption found wanting in *Vlandis* and *Salfi.*

V. There Is No Separate, Adequate And Independent State Ground On Which The Florida Court Could Have Conceivably Decided The Issue In This Case.

The respondent also argues that there is a separate, adequate and independent state ground by which petition-

ers could be denied the benefits of Florida's homestead tax exemption. The state's determination that only aliens in possession of permanent resident alien cards have the legal capacity to declare a permanent residence in Florida, however, can only be based on the state's mistaken interpretation of federal law. No state has the power to determine which aliens may enter the country and establish permanent residency. *Toll,* 458 at 20.

Whether the courts of the State of Florida correctly interpreted federal law in denying homestead exemptions in *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963), *Matter of Cooke,* 412 So.2d 340 (Fla. 1982) and *Alcime v. Bystrom,* 451 So.2d 1037 (Fla. 3d D.C.A. 1984) is not at issue. It is, however, clear that in all those cases the Florida courts were obliged to interpret federal law before they could turn to an analysis of the state's constitutional and statutory provisions. The denial of homestead exemptions in those three cases turned directly and solely on the alien status of the parties. That status must be determined by applying federal law. To do otherwise would violate the Supremacy Clause of the United States Constitution. *Toll, supra.*

As respondent Miller acknowledges, the Florida Supreme Court in *Juarrero* referred to the nature of the petitioner's visa as being temporary rather than permanent by analyzing federal law. Miller Br. at 19. Similarly in *Cooke,* the state court quoted the federal bankruptcy judge who explained Cooke's status under federal law. Miller Br. at 21. It is exactly this determination of petitioners' status under federal law that is at issue here.

VI. Respondent Misunderstands The Significance Of Petitioner's Federal Immigration Status And Misunderstands That The Cuban-Haitian Entrant Status Can Permit A Person To Declare, In Good Faith, His Intention To Be A Permanent Resident Of Florida.

The respondent's final argument is that Florida's refusal to grant homestead tax exemption to petitioners is proper "because Petitioners are not permanent residents (under federal standards)." Miller Br. at 28. This position demonstrates the respondent's fundamental misconception of the central issue in this case. The petitioners are *not* arguing that they are permanent residents under federal law and are therefore entitled to homestead exemption and residency under Florida law. Rather, they argue, as respondent concedes, that they are "allowed to reside in the United States on an indefinite basis until their permanent status is decided." Miller Br. at 28. As the petitioners have the right to remain in Florida and the United States "indefinitely" until they become residents, the respondent can not use the criteria of federal residency to deny them tax exemption in Florida, just as the State of Maryland could not use the lack of federal permanent residency by G-4 aliens as the basis to deny in-state tuition. There is no condition or limitation on Cuban-Haitian Entrant status which would bar the petitioners from declaring, in good faith, that Florida is their permanent residence.

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CONCLUSION

Respondent Miller offers no argument which seriously suggests that this Court should not accept certiorari in this case. Indeed, this respondent recognizes the status of the petitioners under federal law, but for erroneous reasons believes that they can be treated differently than all other persons expressing their intention to be Florida residents[4]. This Court should accept the writ to clarify the erroneous position, existing since 1963, that the State of Florida may make impermissible distinctions based on alienage contrary to federal law.

Respectfully submitted,

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4. The respondent also disingenuously argues that this case is not of vital importance because the state "is aware" of only two cases under the homestead provision brought by Cuban-Haitian entrants. Although its "awareness" is limited to those cases which have reached the appellate courts, others have sought the exemption and have been denied. This, of course, does not account for those thousands of Cuban-Haitian Entrants who have been discouraged from applying because of the status of the law.

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No. 84-1287

In The

Supreme Court of the United States

October Term, 1985

LOUIS LIPHETE, ET AL.,

Petitioners,

v.

MERRITT STIERHEIM, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

PETITIONERS' REPLY TO THE BRIEF OF THE UNITED STATES AS AMICUS CURIAE

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ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

PETITIONERS' REPLY TO THE BRIEF OF THE UNITED STATES AS AMICUS CURIAE

This Brief of Petitioners is filed in response to the Brief for the United States as Amicus Curiae. The United States, as Amicus Curiae, contends that Petitioners misunderstand both their immigration status and Florida law in asserting that the decision below conflicts with the Supremacy, Equal Protection and Due Process Clauses. (Brief of the United States as Amicus Curiae ("U.S.

Br.") at 4). In their attempt to convince the Court to deny further review, however, the United States confuses discrete categories of aliens, misconstrues this Court's decisions in *Toll v. Moreno,* 458 U.S. 1 (1982) and *Elkins v. Moreno,* 435 U.S. 647 (1978), and mischaracterizes Petitioners' challenge to Florida law.

I. The Solicitor General's Brief Misperceives The Immigration Status Of Petitioners, And As A Result, Incorrectly Asserts The Inapplicability Of Cases Such As Toll v. Moreno, 458 U.S. 1 (1982) And Elkins v. Moreno, 435 U.S. 647 (1978).

Contrary to the Solicitor General's contentions, Petitioners are *not* excludable aliens paroled into the United States pursuant to § 212(d)(5), Immigration and Nationality Act, 8 U.S.C. § 1182(d)(5). They are "Cuban/Haitian Entrants", a special immigration status created by the Executive Branch under authority of the U.S. Coordinator for Refugee Affairs and the Commissioner of the Immigration and Naturalization Service acting pursuant to the Refugee Act of 1980 and the Immigration and Nationality Act. (See, Petitioners' Appendix A32-A33; A40-A47). Indeed, the Solicitor concedes that the government "created a special status designated as 'Cuban/Haitian Entrants (status pending)'." (U.S. Br. at 2). The Solicitor further concedes that Cuban/Haitian Entrants are a "discrete group of aliens", (U.S. Br. at 4), and a group that has been given a variety of benefits not accorded other aliens. (U.S. Br. at 3 n.1). Contrary to the Solicitor General's contention, the members of this status are not exclusively excludable aliens. Indeed, the

majority of the Haitian Entrants, i.e., those in immigration proceedings prior to October 10, 1980, are aliens who entered the United States and are, therefore, *deportable* rather than excludable aliens. Hearing before the Subcommittee on Immigration, Refugeees, and International Law, House Comm. on the Judiciary, 98th Cong. 2d Sess. 112 (May 9, 1984), set forth as an appendix hereto.

The real point, however, is not that the Entrants are deportable or excludable aliens, i.e., simply, aliens whose status is under active challenge by the government and whose deportation is imminent. Rather, Petitioners are aliens accorded a special regularized status for over five years that precludes the Immigration and Naturalization Service from subjecting them to proceedings for exclusion or deportation and which permits them to reside in our country as the functional equivalent of lawfully admitted aliens. Moreover, the contemplation, not only of these aliens but also of the President and Congress, is that these aliens will become lawful permanent residents. See statement of U.S. Coordinator for Refugee Affairs, set forth in Petitioners' Petition for Writ of Certiorari, A42 ("the President has decided to seek special legislation regularizing the status of Cuban/Haitian Entrants. This legislation will allow them to remain in the United States and will make them eligible for certain benefits . . ."); (U.S. Br. at 6 n.5); *See,* S1200, Title II § 202(a)(2)(D) (pending legislation, already passed by the Senate, adjusting the status of Cuban/Haitian Entrants to permanent residents).[1] Indeed, the Solicitor recognizes the legislation

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[1]The Solicitor's reference to *Jean v. Nelson,* 105 S.Ct. 2992 (1985) is inapposite in this context. As stated above, Cuban/Haitian entrant status is not a status for excludable aliens; nor are any of the class members in *Jean* categorized as Cuban/Haitian entrants.

and special treatment that characterizes the Cuban/Haitian entrant status. (U.S. Br. at 3 n.1; 7 n.5). Thus, Cuban/Haitain Entrants, by the Solicitor's own concessions, are in a far different status than those aliens who are "still in theory at the boundary line and ha[ve] gained no foothold in the United States." *Leng May Ma v. Barber,* 357 U.S. 185, 189 quoting *Kaplan v. Tod,* 267 U.S. 228, 230 (1925). (U.S. Br. at 7).

The Solicitor General's misunderstanding of the special status of Cuban/Haitain Entrants leads him to erroneously assert the inapplicability of cases such as *Toll v. Moreno,* 458 U.S. 1 (1982). *Toll* stands for the proposition that state regulation that discriminates against aliens who have not been precluded by Congress from establishing domicile in the United States is impermissible if it imposes additional burdens not contemplated by Congress. *Toll, supra,* at 12-13. The critical distinction drawn in *Toll* between the G-4 status and several other immigration statuses was that the former status does not bar an alien from acquiring domicile in the United States, while aliens with the latter statuses were precluded by Congress from establishing docimile. See *Toll, supra,* at 14 n.20. *Toll,* thus, stands for the proposition that unless Congress has precluded an alien, whether immigrant or non-immigrant (as in the case of a G-4 visa holder), from establishing domicile in the United States, then any state's decision to deny the benefits of domicile to an alien, *solely* on account of his or her immigration status ". . . . surely amounts to an ancillary burden not contemplated by the Congress . . . ." *Toll, supra* at 14 (emphasis in original).

The Cuban/Haitian entrant status involved here is thus, analogous to the G-4 category involved in *Toll,* rather

than the other immigration statuses distinguished from G-4 in *Toll* because Congress has not precluded Cuban/Haitian Entrants from establishing domicile. Indeed, both the Executive and Congress, despite the Solicitor's comments to the contrary, recognize the permanence of the Cuban/Haitian Entrants and seek now merely to formalize that permanence through legislation. (U.S. Br. at 6 n.5). Here, the state of Florida has created "ancillary burdens" on Cuban/Haitian Entrants not contemplated by Congress.

II. The Solicitor's Misconception Of The Special Status Of Cuban/Haitian Entrants Also Results In His Misapplication Of Vlandis v. Kline, 412 U.S. 441 (1973) and Weinberger v. Salfi, 422 U.S. 749 (1975)

The Solicitor's argument with regard to *Vlandis* and *Salfi* rest entirely upon his misconception of Petitioners' status. The Solicitor claims that Petitioners have no due process claim under either *Vlandis* or *Salfi* because "parolees are not entitled to claim permanent residence or domicile in the United States . . . ." (U.S. Br. at 11). As stated above, however, Petitioners are not parolees. As Cuban/Haitian Entrants, their "special status" at a minimum entitles them to form the intent to remain in the United States permanently. Despite the Petitioner's ability to demonstrate that they meet all the criteria for domicile under the law of the State of Florida, the State precludes them even from the opportunity of establishing their domicile solely because they do not have permanent immigrant visas. As this Court recognized in *Elkins*, the State of Florida is precluded from taking this position under *Vlandis* as limited by *Salfi*. Here, as in

Elkins, "this case is squarely within *Vlandis* as limited by *Salfi* to those situations in which a state 'purport[s] to be concerned with [domicile but] at the same time den[ies] to one seeking to meet a test of [domicile] the opportunity to show factors clearly bearing on that issue.' *Weinberger v. Salfi*, 422 U.S. at 771." *Elkins*, 435 U.S. 647 at 660.

The Solicitor, of course, concedes that that is precisely what the State of Florida has done here. (U.S. Br. at 9 n.8). Indeed, the Solicitor also concedes that *Vlandis* would apply in other contexts, (U.S. Br. at 11), but denies its validity here solely because of his misunderstanding of the Cuban/Haitian Entrant status.

III. The Solicitor's Equal Protection Argument Is Contrary To Plyler v. Doe, 457 U.S. 202 (1982) And Other Decisions Of This Court And Is, Again, Based On A False Assumption Concerning Petitioner's Status

The Solicitor contends that Florida does not establish classifications based on alienage but rather based upon residency. (U.S. Br. at 10). This statement, however, patently contradicts the Solicitor's recognition that the Florida scheme is invalid because it distinguishes between various categories or aliens and "[t]o the extent that [it] would deny permanent resident status to persons such as G-4 aliens who may become domiciliaries of the United States, that portion of the Florida system may not survive *Toll* and *Elkins*." (U.S. Br. at 9 n.8).

The Solicitor finds the distinction drawn by the State of Florida permissible with respect to the Petitioners solely because their status as parolees does not permit them to

have any legitimate expectation that they will be permitted to remain in the United States. (U.S. Br. at 10).

The Solicitor's contentions are in error for several reasons. First, the Solicitor is in error as to Cuban/Haitian Entrants as the majority are not parolees. Second, the judicial gloss placed upon Florida's Homestead Tax Exemption Statue clearly distinguishes between groups of aliens. In *Juarrero v. McNayr,* 157 So.2d 79 (Fla. 1963) and *Matter of Cooke,* 412 So.2d 340 (Fla. 1982), the Florida Supreme Court's judicial gloss upon the statute establishes two classes of aliens for purposes of determining domicile in the State of Florida. Persons who hold lawful permanent immigrant visas are given one status while all other aliens are given another. Even the Solicitor recognizes that this scheme would not survive judicial scrutiny as to some of the groups of aliens that are excluded. (U.S. Br. at 9 n.8). Florida, of course, did not deny tax exempt status to Petitioners based on "... restrictions imposed on parolees by Federal law" (U.S. Br. at 10), but rather based on *Juarrero,* which divides aliens between those with lawful permanent resident visas and all others.

The Solicitor's claim that this distinction, as it applies to Petitioners, would be valid because Petitioners are "parolees", flies directly in the face of *Plyler v. Doe,* 457 U.S. 202 (1982), even if we were to assume *arguendo* that Petitioners were parolees. As the Court held in *Plyler,* even an undocumented alien cannot be deprived of a state benefit solely because of his status. In *Plyler,* this Court squarely rejected the argument "that the undocumented status of these [alien] children *vel non* establishes a sufficient rational basis for denying them benefits that a state

might choose to afford other residents." *Plyler*, 457 U.S. at 224. The Solicitor's argument, therefore, that the Petitioners' alleged status as parolees is a legitimate basis for denying them State tax exemption is directly contrary to *Plyler*.

In the present case, of course, Petitioners have a much stronger case than the undocumented aliens in *Plyler*. Petitioners are in a legal status created especially for them. No rational basis can be advanced for discriminating against aliens who can and have formed the intent to reside in the United States permanently and to make Florida their domicile.[2]

Finally, the Solicitor's claim that the distinction drawn by the State of Florida is rationally based because persons such as the Petitioners could "have no legitimate expectation that they will be permitted to remain in the United States", (U.S. Br. at 10), simply flies in the face of the Cuban/Haitian entrant status. The status is one which directly contemplates, by its very existence, persons who will remain in the United States until legislation is approved to permit them to become lawful permanent residents. (See, Petitioners' Appendix to its Petition for Writ of Certiorari at A-40-A-47).

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[2]The Solicitor is also in error with respect to the position that strict scrutiny does not apply. The Solicitor's claim that strict scrutiny is inapplicable without "a showing of discriminatory intent" (U.S. Br. at 10), is inapplicable to a case, such as this one, where the State's judicial gloss makes the statute facially invalid. This is not a case of discriminatory impact. Rather, the state court's interpretation discriminates against all persons who are not United States citizens or permanent immigrant visa holders.

CONCLUSION

For all the foregoing reasons, and the reasons set forth in the Petition for Certiorari, this Court should issue the writ to declare that the State of Florida may not make impermissible distinctions based on the Petitioners' Cuban/Haitian entrant status.

Respectfully submitted,

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APPENDIX

CUBAN/HAITIAN ADJUSTMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON

IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

98TH CONGRESS

SECOND SESSION

ON

H.R. 4853

CUBAN/HAITIAN ADJUSTMENT

MAY 9, 1984

SERIAL NO. 64

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APPENDIX 2

HAITIAN ARRIVALS BY MONTH AND YEAR

(EPI and EWI*)

		Monthly/ Yearly Total	Cumu- lative Total	Ins Exclusion Cases (EPI)	Ins Deportation Cases (EWI)**
1971-1979		5912	5912	1830	4082
1980		24530	30442	13136	11394
		* * *			
1980	Jan	1063	6975	502	561
	Feb	919	7894	164	755
	Mar	1947	9841	889	1058
	Apr	2165	12006	1004	1161
	May	2719	14725	1081	1638
	Jun	2247	16972	1048	1199
	Jul	1721	18693	890	831
	Aug	2477	21170	1585	892
	Sep	3347	24517	2155	1192
	Oct	3331	27848	2426	905
	Nov	1274	29122	680	594
	Dec	1320	30442	634	685
		* * *			

*EPI: Entered and Processed Immediately EWI: Entered Without Inspection

**Changed INS processing/deportation procedures ended EWI registration in June 1981.

SOURCE: HHS/ORR

Supreme Court, U.S.
FILED
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CLERK

No. 84-1287

In the Supreme Court of the United States

OCTOBER TERM, 1985

LOUIS LIPHETE, ET AL., PETITIONERS

v.

MERRITT STIERHEIM, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether the ineligibility of certain alien parolees for the homestead tax exemption accorded permanent residents by Florida law violates the Supremacy, Equal Protection, or Due Process Clauses of the United States Constitution.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE THIRD DISTRICT COURT OF APPEAL OF FLORIDA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States.

STATEMENT

1. a. Section 235(b) of the Immigration and Nationality Act of 1952 (the Act), 8 U.S.C. 1225(b), provides that "[e]very alien * * * who may not appear to the examining immigration officer at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for further inquiry to be conducted by a special inquiry officer." Section 212(d)(5)(A) of the Act, 8 U.S.C. 1182(d)(5)(A), further provides that, while this inquiry is being conducted, the Attorney General "in his discretion" may parole into the United States any alien applying for admission "under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest." See

generally *Jean* v. *Nelson*, No. 84-5240 (June 26, 1985), slip op. 2, 8. This parole mechanism thus provides a device that makes it possible to avoid confining the alien at the border — or turning him away altogether — while his immigration status is unresolved. See generally *Leng May Ma* v. *Barber*, 357 U.S. 185, 190 (1958).

Under Section 212(d)(5)(A), however, parole "shall not be regarded as an admission of the alien" to the United States. When, in the Attorney General's judgment, the purposes of the parole have been served, the statute directs that "the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." See generally *Jean*, slip op. 2.

b. During the late 1970's and early 1980's, substantial numbers of undocumented aliens lacking required entry visas arrived at ports in Florida from Haiti and Cuba; in the spring of 1980 alone, well over 100,000 Cubans were brought to Florida through a "sealift" originating in Mariel Harbor, Cuba. Pet. App. A40 (statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs). See generally *Jean*, slip op. 1, 2. These aliens were unable to benefit from existing provisions of the immigration laws dealing with refugee and asylum status. See Pet. App. A41 (statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs). The prospect of turning away altogether this sudden and sizable influx of aliens nevertheless was seen as both inequitable and impractical (see *id.* at A40, A42).

In response to these considerations, immigration authorities informally created a special status, designated as "Cuban/Haitian Entrants (Status Pending)," to identify undocumented Cubans and Haitians arriving in the United States prior to October 10, 1980. See Pet. App. A42 (statement of Victor H. Palmieri, U.S. Coordinator for Refugee

Affairs); *id.* at A32 (cable from the Commissioner of Immigration and Naturalization). While persons fitting into this category were to be "paroled or granted extended voluntary departure or stay of deportation, as appropriate" (*ibid.*), aliens granted the status were not deemed to have been legally "admitted" to the United States.[1]

2. a. The Constitution of the State of Florida provides that every permanent resident of the State is entitled to claim a homestead tax exemption of up to $5000 on the assessed value of his permanent residence. Fla. Const. Art. VII, § 6(a). See Fla. Stat. § 196.031(1) (1983). Florida law defines "permanent residence" as the place at which a person has "his true, fixed, and permanent home and principal establishment to which, whenever absent, he has the intention of returning." Fla. Stat. § 196.012 (1983). Intent to establish permanent residence within the State is determined as a factual matter, in the first instance by state property appraisers. Fla. Stat. § 196.015 (1983). The Florida courts have held, however, that aliens who have not been admitted for permanent residence in the United States cannot, as a matter of state law, form an intent to establish permanent residence in Florida. See *In re Cooke*, 412 So.2d 340 (Fla. 1982); *Juarrero* v. *McNayr*, 157 So.2d 79 (Fla. 1963).

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[1]In recognition of the inability of states and localities to adequately provide for this new population of displaced persons, aliens in the Cuban/Haitian Entrants (Status Pending) category were permitted to qualify for various forms of federal financial assistance, including certain types of Social Security benefits (see Pet. App. A42-A43 (statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs)). In addition, Congress enacted legislation to assist localities in educating both the children of aliens in this category and the adult aliens themselves. Pub. L. No. 96-422, 94 Stat. 1799 *et seq.*

b. Petitioners are Haitian nationals who were paroled into the United States, and were classified by the Immigration and Naturalization Service (INS) as Cuban/Haitian Entrants (Status Pending); they have lived in Florida since 1978, and have owned a home in Miami since 1982 (Pet. App. A9). In May 1983, petitioners were denied a homestead tax exemption by the Dade County tax appraiser because they lacked permanent resident visas (*id.* at A11-A12). After unsuccessfully appealing this initial administrative determination, petitioners brought suit for declaratory and injunctive relief in circuit court for Dade County, alleging that the State's denial of their application violated the Due Process, Equal Protection and Supremacy Clauses of the United States Constitution.

The court dismissed the complaint (Pet. App. A5-A7). It found petitioners' claims controlled by *Juarrero* v. *McNayr, supra*, explaining that petitioners "are legally incapable of declaring a Florida home their permanent residence" (Pet. App. A6). The Florida Third District Court of Appeal affirmed without opinion (*id.* at A4). The Florida Supreme Court subsequently dismissed petitioners' appeal for want of jurisdiction (*id.* at A1).

DISCUSSION

Petitioners contend that the decision below conflicts with this Court's rulings construing the Supremacy, Equal Protection and Due Process Clauses. Their argument, however, is grounded on a misunderstanding both of their immigration status and of Florida law. Moreover, the Florida court's decision has implications only for the discrete group of aliens who were placed in the Cuban/Haitian Entrants (Status Pending) category prior to October 10, 1980. Further review therefore is not warranted.[2]

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[2]Respondents are incorrect, however, in asserting (Stierheim Br. in Opp. 4-6, 15-18; Miller Br. in Opp. 17-29) that the decision below rests on an independent and adequate state ground. From the outset,

1. This Court has "long recognized the preeminent role of the Federal Government with respect to the regulation of aliens within our borders." *Toll* v. *Moreno*, 458 U.S. 1, 10 (1982). See, *e.g.*, *Mathews* v. *Diaz*, 426 U.S. 67 (1976); *Graham* v. *Richardson*, 403 U.S. 365, 377-380 (1971). It thus has declared repeatedly that " 'state regulation not congressionally sanctioned that discriminates against aliens lawfully admitted to the country is impermissible if it imposes additional burdens not contemplated by Congress.' " *Toll*, 458 U.S. at 12-13, quoting *De Canas* v. *Bica*, 424 U.S. 351, 358 n.6 (1976). At the same time, however, the Court "has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* preempted." *De Canas*, 424 U.S. at 355. Resolution of a Supremacy Clause claim such as the one in this case therefore requires a close examination of the immigration status conferred upon the claimant by federal law. See *Toll*, 458 U.S. at 13.

Here, petitioners' argument that the Florida homestead rule conflicts with federal law (Pet. 10-16, 18-19, 25-26) is premised on a misleading description of their immigration status. Contrary to petitioners' assertions (see, *e.g.*, Pet. 7, 14, 15, 16, 25), aliens in the Cuban/Haitian Entrants (Status Pending) category have not been given "permission to remain in the United States indefinitely" (Pet. 14) or "the right to remain permanently in the United States" (Pet. 25), either by the President[3] or by Congress. Nor have aliens in

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petitioners' contention on the merits has been that the Florida law of permanent residence itself is inconsistent with federal law. See Pet. App. A13-A16. The courts below necessarily interpreted federal law in rejecting that claim.

[3]Although petitioners make frequent reference (see, *e.g.*, Pet. 25) to a "Presidential Order" or "Executive Order" establishing their status, at no time has a President of the United States issued any such order. See pages 2-3, *supra*.

petitioners' category yet been accepted "as permanent residents of the United States" (Pet. 7) or designated a "non-deportable class" (Pet. 14). Instead, they have been paroled into this country temporarily pursuant to the Attorney General's discretionary authority under Section 212(d)(5)(A) of the Act. See pages 2-3, *supra*. No congressional action has been taken to alter that status.[4]

As the Act itself expressly provides (see pages 1-2, *supra*), and as this Court repeatedly has recognized, such parole is not to be "regarded as admission of the alien" to the United States. *Jean* v. *Nelson*, No. 84-5240 (June 26, 1985), slip op. 2. It is, instead, simply a substitute for "needless confinement" at the border that "was never intended to affect an alien's status" (*Leng May Ma* v. *Barber*, 357 U.S. 185, 190 (1958)); a grant of parole thus does not "legally constitute an entry [into the United States] though the alien is still physically within the United States." *Id.* at 188. See *Shaughnessy* v. *United States ex rel. Mezei*, 345 U.S. 206, 215 (1953). And this distinction is a meaningful one: paroled aliens are subject to exclusion proceedings and are accorded a far lesser set of rights than are aliens who have been admitted to the United States. See *Leng May Ma*, 357 U.S. at 187; *Kwong Hai Chew* v. *Colding*, 344 U.S. 590, 596 (1953).[5] For purposes of federal law, petitioners' status accordingly is no

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[4]Congress recognized the status of such aliens as parolees in the United States when it made them eligible for educational benefits. Pub. L. No. 96-422, § 501(e) 94 Stat. 1810. See note 1, *supra*.

[5]As petitioners note (Pet. 15), the President has proposed and Congress has considered adjusting the status of aliens in the Cuban/Haitian Entrants (Status Pending) category. See Pet. App. A36 (Social Security Program Instruction, June 27, 1980), A42 (statement of Victor H. Palmieri, U.S. Coordinator for Refugee Affairs); H.R. 3080, 99th Cong., 1st Sess. (1985); S. 1200, 99th Cong., 1st Sess. (1985); H.R. 1510, 98th Cong., 2d Sess. (1984); S. 529, 98th Cong., 2d Sess. (1983). To date, however—as the "Status Pending" portion of the classification designation suggests—no such action has been taken. And in the absence of

different from that of an alien who is " 'still in theory at the boundary line and has gained no foothold in the United States.' " *Leng May Ma*, 357 U.S. at 189, quoting *Kaplan* v. *Tod*, 267 U.S. 228, 230 (1925).

In these circumstances, petitioners' reliance on *Toll* v. *Moreno, supra*, and *Elkins* v. *Moreno*, 435 U.S. 647 (1978), is misplaced. Those cases involved a challenge to a University of Maryland policy that denied the dependents of so-called "G-4" nonimmigrant visa holders the "in-state" status that would have entitled them to reduced tuition.[6] The Court pointed to two factors in holding that the University's

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legislation, Section 212(d)(5)(A) of the Act mandates that persons such as petitioners be treated as aliens temporarily in the United States who have not been lawfully admitted.

Petitioners suggest (Pet. 14-15) that they should be considered permanent residents of the United States as a matter of federal law because they are considered to be "permanently residing in the United States under color of law" for purposes of eligibility for certain welfare benefits. See, *e.g.*, 42 U.S.C. 1382c(a)(1)(B)(ii); Pet. App. A36. To the extent that Cuban/Haitian Entrants (Status Pending) meet this test, however, it is because deportable or excludable aliens whom the INS has specifically determined not to deport or expel are considered to be in the United States "under color of law." See *Holley* v. *Lavine*, 553 F.2d 845 (2d Cir. 1977), cert. denied, 435 U.S. 947 (1978). Compare *Sudomir* v. *McMahon*, 767 F.2d 1456 (9th Cir. 1985). An alien thus may satisfy the "under color of law" test without being a lawful permanent resident of the United States for purposes of the immigration laws—or of the Florida law at issue here. Indeed, Congress expressly authorized the President to grant Cuban/Haitian Entrants (Status Pending) a variety of federal benefits (Pub. L. No. 96-422, § 501(b), 94 Stat. 1809)—an action that would have been unnecessary had such aliens been eligible for benefits in the absence of a special executive dispensation.

[6]G-4 aliens are those employed in the United States by international organizations; along with diplomats, such aliens are excepted from the general requirement that nonimmigrants maintain a residence abroad that they do not intend to abandon. See 8 U.S.C. 1101(a)(15)(A) and (G). Primarily for this reason, G-4 aliens may, as a matter of federal law, become domiciliaries of the United States. See *Toll*, 458 U.S. at 6 & n.8; *Elkins*, 435 U.S. at 664-668.

policy violated the Supremacy Clause. In light of Congress's decision to permit G-4 aliens to acquire domicile in the United States (see note 6, *supra*), the Court reasoned that "the State's decision to deny 'in-state' status to G-4 aliens, *solely* on account of the G-4 alien's federal immigration status, surely amounts to an ancillary 'burden not contemplated by Congress' in admitting those aliens to the United States." *Toll*, 458 U.S. at 14 (emphasis in original). And the Court explained that Congress had exempted G-4 aliens from federal and, in many instances, state and local taxes (*id.* at 14-16); the University's policy — which charged a higher tuition to out-of-state residents specifically because they did not pay state income taxes — necessarily would frustrate the federal policies that underlay the tax exemption if applied to G-4 aliens (*id.* at 16).

Neither of these considerations is present in this case. Far from being eligible for domicile in the United States, aliens in the Cuban/Haitian Entrants (Status Pending) category are not even deemed to have been legally admitted to this country. Cf. *Lok* v. *INS*, 681 F.2d 107, 109 (2d Cir. 1982). And the federal government has taken no steps, as it had for the G-4 alien complainants in *Toll* and *Elkins*, to relieve petitioners of the burdens that state law imposes.

Against such a background, the decision of this Court that is most clearly on point is *De Canas* v. *Bica, supra*, where the Court rejected a Supremacy Clause challenge to a California law that prohibited the employment of undocumented aliens. The Court there noted that the California

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[7]Petitioners are incorrect in suggesting (Pet. 14-15) that the Florida provision at issue here is inconsistent with Executive Branch policy. As noted above (see note 1, *supra*), federal financial assistance has been provided to Cuban/Haitian Entrant (Status Pending) aliens expressly to *spare* the states the burden of caring for such aliens while the aliens' immigration status is unresolved.

statute "adopt[ed] federal standards" (424 U.S. at 355), and accordingly declined to invalidate the law absent a demonstration that it "burden[ed] or conflict[ed] in any manner with federal laws or treaties." *Id.* at 357 n.5; see *id.* at 363-365. The same analysis is applicable here: Florida simply declines to treat as permanent residents of the State aliens who, under federal immigration law, are "treated as if stopped at the border." *Mezei*, 345 U.S. at 215. Nothing in such a scheme "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941).[8]

2. Petitioners' equal protection contentions also are flawed. The cases cited by petitioners (Pet. 22), it is true, stand for the proposition that state alienage classifications must be subjected to strict scrutiny unless they involve attempts to define the state's political community. See, *e.g.*, *Bernal* v. *Fainter*, 467 U.S. 216 (1984); *Cabell* v. *Chavez-Salido*, 454 U.S. 432, 438-439 (1982); *Sugarman* v. *Dougall*, 413 U.S. 634 (1973). But that principle comes into play when the statute at issue is "directed at aliens and * * * only aliens are harmed by it." *Nyquist* v. *Mauclet*, 432 U.S. 1, 9 (1977). In contrast, as the Court has noted in the Supremacy Clause context, the Court's decisions applying strict scrutiny have not addressed "a State's imposition of a burden on all individuals sharing a common relevant characteristic, of whom only some are aliens." *Toll*, 458 U.S. at 17 n.25.

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[8]We note, however, that the Florida scheme may conflict with federal law as it applies to other categories of aliens. It appears, for example, that Florida accords permanent resident status only to aliens who have been granted permanent resident visas by the federal government. See *Juarrero*, 157 So.2d at 81. To the extent that Florida would deny permanent resident status to persons such as G-4 aliens who may become domiciliaries of the United States, that portion of the Florida system may not survive *Toll* and *Elkins*.

The Florida classification at issue here falls into this latter category: it is based on permanent residence, not on alienage. Many aliens are permanent residents of Florida (see generally *In re Cooke, supra*); many United States citizens are not. Concededly, Florida's homestead tax exemption rules, which turn on the applicant's intention permanently to reside in the State, make it impossible for alien parolees to obtain the benefits of the tax exemption. But that is a function not of their alienage per se, but rather of the restrictions imposed on parolees by federal law. And as this Court repeatedly has explained, absent a showing of discriminatory intent — which petitioners have not established — a regulation's differential impact on individuals having a "suspect" characteristic does not warrant the application of strict scrutiny. See, *e.g., Personnel Administrator* v. *Feeney*, 442 U.S. 252, 272 (1979); *Village of Arlington Heights* v. *Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977); *Washington* v. *Davis*, 426 U.S. 229, 242 (1976).

In the absence of strict scrutiny, petitioners' equal protection challenge cannot succeed. Persons who have no legitimate expectation that they will be permitted to remain in the United States (whatever their subjective intentions) plainly stand on a different footing from those — whether citizen or alien — who are domiciled in this country. And by distinguishing between these groups of persons, the Florida system presumably serves to encourage long-term home ownership in the State, while benefitting those who can be expected to contribute to the State over a substantial period. These purposes undoubtedly are legitimate (cf. *Village of Belle Terre* v. *Boraas*, 416 U.S. 1, 19 (1974)), and are rationally furthered by the state classification at issue here. See, *e.g., Schweiker* v. *Wilson*, 450 U.S. 221, 234-235 (1981); *Massachusetts Bd. of Retirement* v. *Murgia*, 427 U.S. 307, 314 (1976); *Dandridge* v. *Williams*, 397 U.S. 471, 486-487 (1970).

3. Finally, petitioners' due process contentions do not warrant further review. Relying on *Vlandis* v. *Kline*, 412 U.S. 441 (1973), petitioners argue (Pet. 16-18, 22-24) that the Florida scheme makes use of an unconstitutional "irrebuttable presumption" because it denies parolees an opportunity to establish that they are permanent residents of Florida. In fact, however, petitioners "have no due process claim under either *Vlandis* or [*Weinberger* v.] *Salfi* [,422 U.S. 749 (1975),]" for the challenged "presumption" — that parolees are not entitled to claim permanent residence or domicile in the United States — is "universally true." *Elkins*, 435 U.S. at 661. As explained above, under both federal and Florida law aliens in the Cuban/Haitian Entrants (Status Pending) category may not establish domicile in this country. Whatever the applicability of *Vlandis* in other contexts,[9] then, that case provides petitioners no support here.

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[9]As this Court repeatedly has made clear, legislation that satisfies equal protection standards " 'is perforce consistent with * * * due process requirements.' " *Salfi*, 422 U.S. at 770, quoting *Richardson* v. *Belcher*, 404 U.S. 78, 81 (1971). The question for due process purposes therefore "is whether [the legislature], its concern having been reasonably aroused by the possibility of an abuse which it legitimately desired to avoid, could rationally have concluded both that a particular limitation or qualification would protect against its occurrence, and that the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule." *Salfi*, 422 U.S. at 777. As explained above (at 9-10), the Florida scheme does not deny petitioners equal protection; they accordingly cannot make out a violation of due process.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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